

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. January 27, 2009

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on January 13, 2009

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA

1. *ZON2008-00061 and CUP2008-00044 – Amendment #1 to DP-295 Stonebridge Commercial Community Unit Plan and zone change from LC Limited Commercial (“LC”) to GC General Commercial (“GC”); generally located at the southeast corner of West 37th Street North and North Maize Road. (District V)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change to GC General Commercial and the CUP, subject to platting within one year; withhold publication of the ordinance until the plat is recorded; OR 2) Return the application to the MAPC for reconsideration.
(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

2. *SUB 2008-80-Plat of Westside Church of Christ Addition located on the north side of 47th Street South and west of Meridian. (District IV)

RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

3. *DED 2009-1 -- Access Dedication located south of Harry Street and on the west side of Hoover Avenue. (District IV)

RECOMMENDED ACTION: Accept the Dedication

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA

1. *North Shuttle Parking Lot - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

2. *Renovations to Hangar 16 (1700 Airport Road) - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the budget adjustment.

3. *Renovations to Water Works (2100 Airport Road) - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the project and initiate the budget.

4. *Drainage Study Supplemental Agreement No. 1 - Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the agreement, approve the capital budget increase, and authorize necessary signatures.

5. *Airfield Lighting System Replacement - Change Order No. 1 - Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the change order and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

- 1.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA

1. Report of Board of Bids. (NONE)

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>New</u>	<u>2009</u>	<u>(Consumption on Premises)</u>
Willis E Hartman	Angela's LLC dba Knolla's Pizza*	13011 East 21 SU111

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.

RECOMMENDED ACTION: Approve street closure.

5. Agreements/Contracts:

- a. Mental Health Court Contract.
- b. Design Build Irrigation System, Linwood Park. (District I)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Design Services Agreements:

- a. Water and Sewer Improvements at an Unplatted Tract located north of 29th Street North and east of Greenwich Road. (District II)
- b. Via Christi-West Campus Addition, east of 151st Street West, north of 21st Street. (District V)
- c. Utility Improvements in the Intrust Bank Arena Area. (District I)-Supplemental.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Change Orders:

- a. Change Order and Petition for Storm Water Drain the Woods Addition, east of 151st Street East, north of Maple. (District V)

RECOMMENDED ACTION: Approve the Change Order; approve the new petition; adopt the resolution; and authorize the necessary signatures.

8. Property Acquisition:

- a. Acquisition of a portion of 777 North McLean, 2711 West Murdock and 2715 West Murdock for the 9th Street Drainage Outfall Project (District VI)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

9. Minutes of Advisory Boards/Commissions.

Wichita Airport Advisory Board, December 1, 2008
District VI Advisory Board, December 1, 2008
District VI Advisory Board, December 17, 2008
District IV Advisory Board, December 5, 2007
District IV Advisory Board, February 6, 2008
District IV Advisory Board, March 5, 2008
District IV Advisory Board, April 1, 2008
District IV Advisory Board, May 7, 2008
District IV Advisory Board, June 4, 2008
District IV Advisory Board, July 2, 2008
District IV Advisory Board, August 6, 2008
District IV Advisory Board, October 1, 2008
District IV Advisory Board, November 5, 2008
District IV Advisory Board, December 3, 2008
Wichita Board of Appeals of Plumbers and Gas Fitters, December 3, 2008
Wichita Board of Appeals of Plumbers and Gas Fitters, January 7, 2009
Arts Council, December 11, 2008
Wichita Public Library, December 2008

RECOMMENDED ACTION: Receive and file.

10. Acquisition of Easement by Eminent Domain for the Main 13, Southwest Sewer Interceptor, Lateral Line 23, Near West Kellogg and 111th Street. (District IV)

RECOMMENDED ACTION: Adopt the resolution and approve and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District Court to accomplish such acquisition.

11. Lease of Antenna Site on McLean Manor. (District VI)

RECOMMENDED ACTION: Approve the lease and authorize all necessary signatures.

12. Purchase Option, Conopco, Inc. (District IV)

RECOMMENDED ACTION: Adopt the Resolution approving the Bill of Sale and Termination of Lease Agreement to convey the property to Conopco, Inc. and authorize necessary signatures.

13. 2006/2007 Traffic Signalization Program. (District III)

RECOMMENDED ACTION: Approve signalization of the I-135 and South Hydraulic Intersection, adopt the amending Resolution and authorize the necessary signatures.

14. Westar Poles for Waterman Improvement, between Main and Washington. (District I)

RECOMMENDED ACTION: Approve the payment to Westar Energy in the amount of \$57,480.

15. Agreement for Preliminary Concept Design: K-96 and Hoover Interchange. (District V)

RECOMMENDED ACTION: Approve the preliminary design project, approve the Agreement, adopt the Resolution, and authorize the signing of State/Federal agreements as required.

16. City of Wichita Point-to-Point Data Network Services.

RECOMMENDED ACTION: Approve the Addendum to Contract for design, installation and implementation of the Point-to-Point Data Network Services with Electronic Technology, Inc.

17. Consent to Assignment of Agreements for Accounting System.

RECOMMENDED ACTION: Approve the Consent to Assignment and authorize the necessary signatures.

18. North Industrial Corridor-Settlement and Release Agreement-United Coverall f/k/a Western Uniform.

RECOMMENDED ACTION: Approve the Settlement Agreement and authorize the appropriate signatures.

19. 2009 Narcotic Seizure Fund Budget.

RECOMMENDED ACTION: Adopt the Narcotic Seizure Fund budget.

20. Payment of Condemnation Award (Case No. 08 CV 3481) --Proposed 21st Street for the Intersection Improvement Project at 21st and Broadway. (District VI)

RECOMMENDED ACTION: Authorize payment to the Clerk of the District Court in the amount of \$579,658.00 for acquisition of property interests condemned in Case No. 08 CV 3481.

21. Second Reading Ordinances: (First Read January 13, 2009)
 - a. Second Reading Ordinances (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council

SUBJECT: ZON2008-00061 and CUP2008-00044 – Amendment #1 to DP-295 Stonebridge Commercial Community Unit Plan and zone change from LC Limited Commercial (“LC”) to GC General Commercial (“GC”); generally located at the southeast corner of West 37th Street North and North Maize Road. (District V)

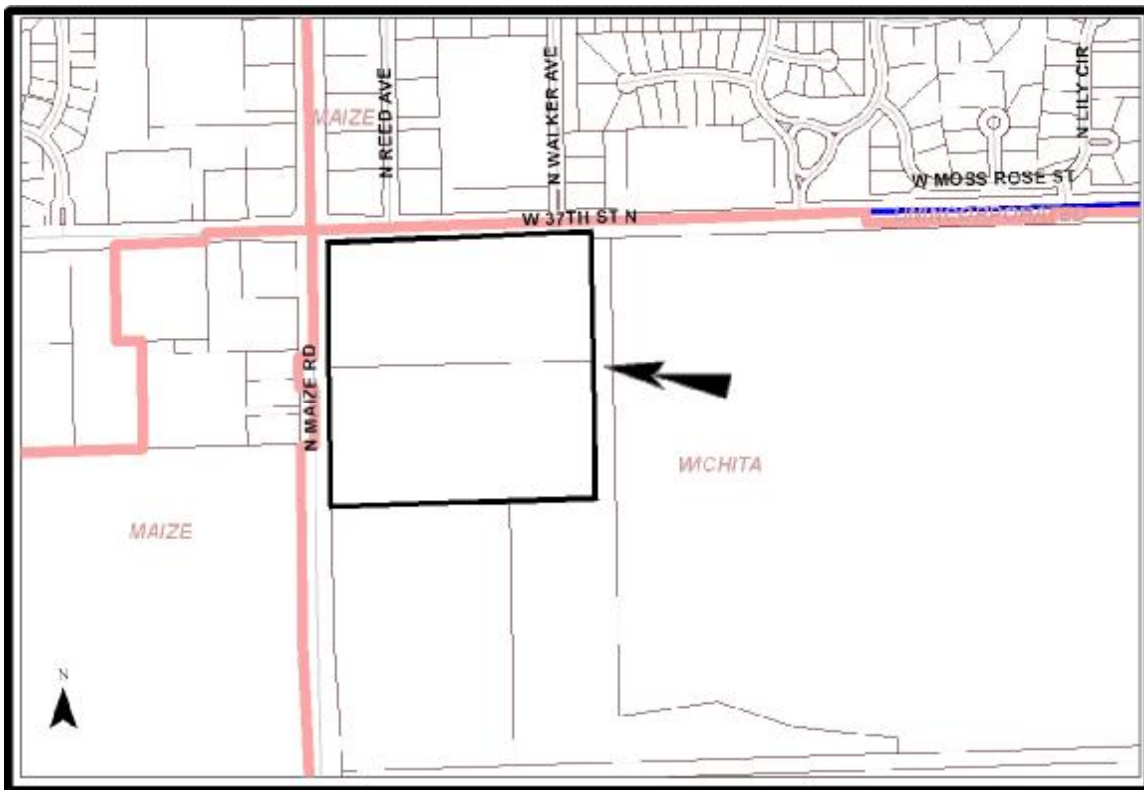
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to staff recommendations (8-0)

MAPD Staff Recommendations: Approve, subject to conditions

DAB Recommendations: Approve, subject to staff recommendations (unanimous)



BACKGROUND: On April 20, 2006, the Metropolitan Area Planning Commission approved LC Limited Commercial (“LC”) zoning subject to DP-295, the Stonebridge Commercial Community Unit Plan (“CUP”), on 36.3 acres located at the southeast corner of Maize Road and 37th Street North. The approved CUP contained 11 parcels and was subject to platting within one year. Since the site’s initial zoning approval, the property owner has sought and received a platting extension to June 6, 2009, so the property is officially still zoned SF-5 Single-family Residential (“SF-5”) even though it has been approved for LC zoning and the CUP development standards.

The current application (Amendment #1) requests the 12 following changes: 1) Divide Parcel 11 into two parcels, 11a and 11b (General Provisions 2, 3A and B); 2) Re-zone Parcel 11b from LC to GC General Commercial (“GC”) (GP 3B); 3) Parcel 11a would allow all LC uses except correctional placement residential, limited, adult entertainment, pawn shop, asphalt or concrete plant, limited, and outdoor storage (GP 3A); Parcel 11b would allow all uses in the GC district except correctional placement residence, limited and general, adult entertainment, pawn shop, asphalt or concrete plant, limited, recycling processing center, animal care general, boarding, breeding or training kennel, hobby kennel, printing and publishing, general, outdoor recreation and entertainment, recreational vehicle campground, riding academy or stable, sexually oriented business, tattooing and body piercing, vehicle and equipment sales, except that construction equipment rental yard and yard maintenance rentals are permitted, vehicle repair, general, manufacturing, limited and general and welding and machine shop (GP 3B); 4) increase the permitted gross floor area ratio from .30 to .32 (GP 2); 5) replace the standard parking minimum from four spaces per 1,000 square feet to a requirement to provide a minimum of 450 spaces for parcels 11a and b (GP 11B); 6) defer installation of the masonry screening wall along the south side of Parcel 1 for four years and waive the masonry wall if the tract to the south of Parcel 1 is developed non-residentially (GP 8F); 7) install a 14-foot tall wooden fence with brick support columns every 50 feet along the south and east side of Parcel 11b (GP 8G); 8) Parcel 11b shall be permitted signage per the GC district (GP 10K); 9) exempt Parcel 11b from the architectural controls applicable to the rest of the CUP (GP 4); increase the height of lighting standards from 25 feet to 27 feet (GP 7D); 10) permit outdoor storage as allowed in the GC district (GP 8D); 11) delete the prohibition regarding overhead doors located within 200 feet of residential zoning (GP 3A) and 12) elimination of the wall along the southern Parcel 11a property line.

Planning staff was advised that Parcels 11a and 11b will be under the same ownership, that the site will be re-platted and the southern 210 feet of Parcel 11a will become a reserve area. The plat that currently has MAPC approval, but not governing body approval, and the proposed revisions to the plat show Parcels 11a and b as both being located within Lot 11 and a proposed reserve.

The 280 acres located to the east and south, owned by USD No. 266 Maize School District, is zoned SF-5 and platted as the Maize School South Campus Addition, which is divided into two lots. Lot 1 of the plat contains the vast majority of the district’s 280 acres and adjoins the application area along the application area’s eastern and southeastern property line (see attached site plan). Lot 1 is partially developed with the Maize South Middle School, associated athletic fields and facilities and drainage facilities. It is projected that two more schools may be built on Lot 1. Drainage facilities that will provide additional buffer between the commercial and the school uses are to be located on the Maize school property located immediately east of the application area and runs along the application area’s eastern property line. Additional drainage facilities are to be located immediately south of the application area for the first 402.51 feet west of the southeast corner of the application area. The land located west of this drainage improvement and south of the application area is Lot 2 which is being held for future development. Lot 2 has over a ¼ of Maize Road frontage. The property located to the west of Maize Road is in large lot residential use or agricultural use, but has been platted and is being developed for commercial use and is located in the City of Maize. The property to the north of 37th Street North is located in the City of Maize and is being developed with a mix of office, institutional and commercial uses.

Analysis: The MAPC considered this item on November 20, 2008. The action of the MAPC was to **APPROVE** the request (8-0), subject to platting within one year, and subject to the following conditions:

- A. **APPROVE** the zone change (ZON2008-00061) to GC General Commercial subject to B. I below, and subject to subject to platting within one year;
- B. **APPROVE** the Community Unit Plan (DP-314), subject to the conditions of the CUP attached hereto and the following modified conditions:
- I. Approve the zone change (ZON2008-00061) to GC General Commercial, except that uses permitted in Parcel 11b, as described in General Provision 3B, are restricted to “construction sales and service” and the outdoor storage of material and equipment ordinarily associated with construction sale and service activities, and home improvement store, and all the uses permitted in Parcel 11a.
 - II. Approve the Community Unit Plan (DP-295), subject to the recommended conditions, and
 1. Prior to publishing the resolution establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referenced as DP-295) includes special conditions for development on this property.
 2. The applicant shall submit four revised copies of the approved CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

District Advisory Board (DAB) V reviewed this request on December 1, 2008, and they requested that it be returned to their meeting of January 5, 2009. At their January 5, 2009 meeting, DAB V unanimously recommended approval of the request subject to staff recommendations.

There have not been any protests or appeals filed.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change to GC General Commercial and the CUP, subject to platting within one year; withhold publication of the ordinance until the plat is recorded; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2008-61

Zone change request from SF-5 Single-family Residential ("SF-5") to GC General Commercial ("GC") on property described as:

The S/2 of the NW/4 of the NW/4 except that part taken for road on W 32-26-1W
AND N/2 of the NW/4 of the NW/4 except that part taken for road on W & except the N
50' for road 32-26-1W, Wichita, Sedgwick County, Kansas

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

EXCERPT OF THE NOVEMBER 20, 2008 MAPC HEARING

Case No.: ZON2008-61 and CUP2008-44 – North 37th LLC (Paul Jackson) / MKEC Engineering Consultant, Inc., (Greg Allison) Request City zone change from SF-5 Single-family Residential to GC General Commercial and City Community Unit Plan Amendment #1 to DP-295 on property described as:

The North Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West and North.

TOGETHER WITH

The South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT road right-of-way on the West; generally located south of 37th Street North and east of Maize Road.

BACKGROUND: On April 20, 2006, the Metropolitan Area Planning Commission approved LC Limited Commercial (“LC”) zoning subject to DP-295, the Stonebridge Commercial Community Unit Plan (“CUP”), on 36.3 acres located at the southeast corner of Maize Road and 37th Street North. The approved CUP contained 11 parcels, and was subject to platting within one year. Since the site’s initial zoning approval, the property owner has sought and received a platting extension to June 6, 2009, so the property is officially still zoned SF-5 Single-family Residential (“SF-5”) even though it has been approved for LC zoning and the CUP development standards.

The current application (Amendment #1) requests the 12 following changes: 1) Divide Parcel 11 into two parcels, 11a and 11b (General Provisions 2, 3A and B); 2) Re-zone Parcel 11b from LC to GC General Commercial (“GC”) (GP 3B); 3) Parcel 11a would allow all LC uses except correctional placement residential, limited, adult entertainment, pawn shop, asphalt or concrete plant, limited, and outdoor storage (GP 3A); Parcel 11b would allow all uses in the GC district except correctional placement residence, limited and general, adult entertainment, pawn shop, asphalt or concrete plant, limited, recycling processing center, animal care general, boarding, breeding or training kennel, hobby kennel, printing and publishing, general, outdoor recreation and entertainment, recreational vehicle campground, riding academy or stable, sexually oriented business, tattooing and body piercing, vehicle and equipment sales, except that construction equipment rental yard and yard maintenance rentals are permitted, vehicle repair, general, manufacturing, limited and general and welding and machine shop (GP 3B); 4) increase the permitted gross floor area ratio from .30 to .32 (GP 2); 5) replace the standard parking minimum from four spaces per 1,000 square feet to a requirement to provide a minimum of 450 spaces for parcels 11a and b (GP 11B); 6) defer installation of the masonry screening wall along the south side of Parcel 1 for four years and waive the masonry wall if the tract to the south of Parcel 1 is developed non-residentially (GP 8F); 7) install a 14-foot tall wooden fence with brick support columns every 50 feet along the south and east side of Parcel 11b (GP 8G); 8) Parcel 11b shall be permitted signage per the GC district (GP 10K); 9) exempt Parcel 11b from the architectural controls applicable to the rest of the CUP (GP 4); increase the height of lighting standards from 25 feet to 27 feet (GP 7D); 10) permit outdoor storage as allowed in the GC district (GP 8D); 11) delete the prohibition regarding overhead doors located within 200 feet of residential zoning (GP 3A) and 12) eliminate the wall along the southern Parcel 11a property line.

Planning staff was advised that Parcels 11a and 11b will be under the same ownership, and that the site will be re-platted, and the southern 210 feet of Parcel 11a will become a reserve area. The plat that currently has MAPC approval, but not governing body approval, and the proposed revisions to the plat show Parcels 11a and b as both being located within Lot 11 and a proposed reserve.

The 280 acres located to the east and south, owned by USD No. 266 Maize School District, is zoned SF-5 and platted as the Maize School South Campus Addition, which is divided into two lots. Lot 1 of the plat contains the vast majority of the district's 280 acres, and adjoins the application area along the application area's eastern and southeastern property line (see attached site plan). Lot 1 is partially developed with the Maize South Middle School, associated athletic fields and facilities, and drainage facilities. It is projected that two more schools may be built on Lot 1. Drainage facilities that will provide additional buffer between the commercial and the school uses are to be located on the Maize school property located immediately east of the application area and runs along the application area's eastern property line. Additional drainage facilities are to be located immediately south of the application area for the first 402.51 feet west of the southeast corner of the application area. The land located west of this drainage improvement and south of the application area is Lot 2 which is being held for future development. Lot 2 has over a ¼ of Maize Road frontage. The property located to the west of Maize Road is in large lot residential use or agricultural use but has been platted and is being developed for commercial use, and is located in the City of Maize. The property to the north of 37th Street is located in the City of Maize and is being developed with a mix of office, institutional and commercial uses.

The division of Parcel 11 into Parcels 11a and 11b creates an awkward shaped Parcel 11a that is a little hard to imagine how it will be successfully developed as a stand-alone parcel, and leaves Parcel 11b without any street frontage. Access to Parcel 11b will be by cross lot circulation.

CASE HISTORY: On April 20, 2006, the MAPC approved CUP2006-00006 and ZON2006-00007 that created DP-295 Stonebridge Community Unit Plan and rezoned the property to the LC zoning district, subject to the development standards contained in DP-295. The zone change and the CUP were approved subject to platting within one year. The MAPC approved the Stonebridge Commercial Addition on July 20, 2006; however the plat has not been forwarded to the governing body. On July 10, 2007, the platting deadline was extended to June 6, 2009.

ADJACENT ZONING AND LAND USE:

NORTH: City of Maize; Institutional, office (university) and commercial
SOUTH: SF-5; Vacant
EAST: SF-5; Institutional (school)
WEST: City of Maize; Agricultural, large-lot residential

PUBLIC SERVICES: Maize Road is a four-lane arterial road, and 37th Street North currently is a two-lane arterial road. It is not proposed to change the site's plat approved access.

CONFORMANCE TO PLANS/POLICIES: **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses," with **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. As proposed, signage is to be adjusted to permit signage allowed in the GC district. **Commercial Locational Guideline #1** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, and **#4** recommends compact clusters versus extended strip development. The proposed CUP includes restrictions on uses, height of parking lot lighting and wider building setbacks for large (over 100,000 square feet) buildings in proximity to residential zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting by June 6, 2009, and subject to the following conditions:

- A. Approve the zone change (ZON2008-00061) to GC General Commercial, except that uses

permitted in Parcel 11b, as described in General Provision 3B, are restricted to “construction sales and service” and the outdoor storage of material and equipment ordinarily associated with construction sale and service activities, and home improvement store, and all the uses permitted in Parcel 11a.

- B. Approve the Community Unit Plan (DP-295), subject to the following conditions:
1. Modify General Provision 10 K to limit signage to the signage permitted in the LC zone district.
 2. Prior to publishing the resolution establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referenced as DP-295) includes special conditions for development on this property.
 3. The applicant shall submit four revised copies of the approved CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is currently zoned SF-5, but is approved for LC zoning subject to DP-295. Land to the east is owned by USD 266 Maize School District and is being developed with schools and associated athletic fields. The property to the west is in the City of Maize, and is in large-lot residential or agricultural uses, but it has been platted and zoned for commercial use. The property on the northwest corner of Maize Road and 37th Street is already zoned LC, subject to DP-262. The property to the north is located in the City of Maize and is being developed with a variety of civic, institutional, office and retail uses.
2. The suitability of the subject property for the uses to which it has been restricted: As indicated above, the site is zoned SF-5, but approved for LC uses subject to the development standards contained in DP-295. The site could be developed as currently zoned, SF-5, however it is not the community’s development pattern to utilize land at the intersection of section-line roads for residential use. The property could be developed as approved, however the current application is designed to meet the needs of a specific user that cannot be accommodated in the LC zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval should mitigate anticipated effects on nearby property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably represent a loss to the property owner. Approval would add choice to the market place with respect to uses that need outdoor storage.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: **Commercial Objective III.B** encourages future commercial areas to “minimize detrimental impacts to other adjacent land uses,” with **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. As proposed, signage is to be adjusted to permit signage allowed in the GC district. **Commercial Locational Guideline #1** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterial streets. The proposed development complies with this guideline. **Commercial Locational Guideline #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use, and **#4** recommends compact clusters versus extended strip development. The proposed CUP includes restrictions on uses, height of

parking lot lighting and wider building setbacks for large (over 100,000 square feet) buildings in proximity to residential zoning.

6. Impact of the proposed development on community facilities: Any increased demand on public facilities can be addressed with the replat.

MOTION: To reconsider Item #6 **ZON2008-61 and CUP2008-44**, which was previously approved as a Consent item.

ANDERSON moved, **SHERMAN** seconded the motion, and it carried (8-0).

FOSTER recused himself and left the bench.

DALE MILLER, Planning Staff presented the Staff Report. He mentioned a change to staff's recommendation regarding signage on parcel 11b. The report recommended the parcel be restricted to LC sign regulations but staff has subsequently agreed to support GC signage for that parcel, as initially requested by the applicant.

MOTION: To approve subject to staff recommendation and amendment.

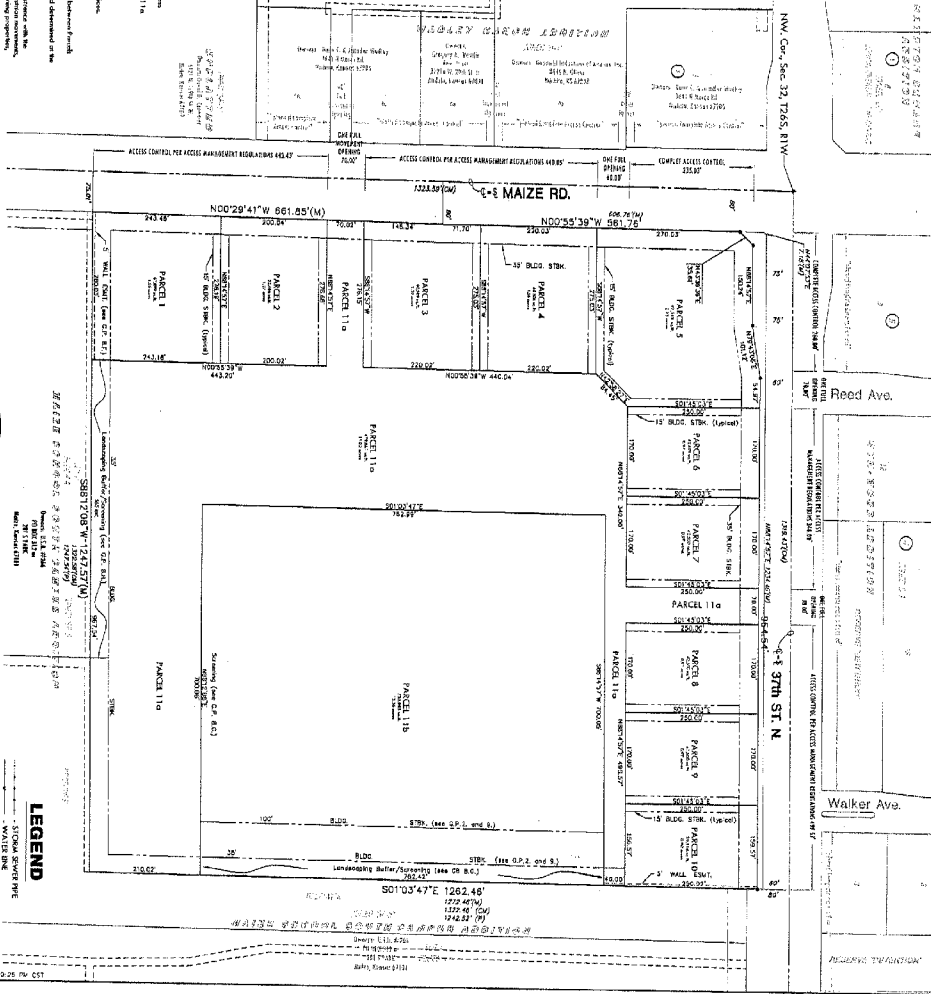
MCKAY moved, **DENNIS** seconded the motion, and it carried (8-0).

FOSTER back on the bench.

DEVELOPMENT GUIDELINES

General Provisions

1. Any development within the City limits shall conform to the following guidelines:
 - a. The development shall be designed to be aesthetically pleasing and compatible with the surrounding environment.
 - b. The development shall be designed to be safe and secure for the public.
 - c. The development shall be designed to be environmentally sound and sustainable.
 - d. The development shall be designed to be socially responsible and equitable.
 - e. The development shall be designed to be economically viable and profitable.
2. The development shall be designed to be aesthetically pleasing and compatible with the surrounding environment.
 - a. The development shall be designed to be aesthetically pleasing and compatible with the surrounding environment.
 - b. The development shall be designed to be safe and secure for the public.
 - c. The development shall be designed to be environmentally sound and sustainable.
 - d. The development shall be designed to be socially responsible and equitable.
 - e. The development shall be designed to be economically viable and profitable.
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 - a. The development shall be designed to be safe and secure for the public.
 - b. The development shall be designed to be environmentally sound and sustainable.
 - c. The development shall be designed to be socially responsible and equitable.
 - d. The development shall be designed to be economically viable and profitable.
4. The development shall be designed to be environmentally sound and sustainable.
 - a. The development shall be designed to be environmentally sound and sustainable.
 - b. The development shall be designed to be socially responsible and equitable.
 - c. The development shall be designed to be economically viable and profitable.
5. The development shall be designed to be socially responsible and equitable.
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 - b. The development shall be designed to be economically viable and profitable.
6. The development shall be designed to be economically viable and profitable.
 - a. The development shall be designed to be economically viable and profitable.



COMMUNITY UNIT PLAN DP-295

STONEBRIDGE

OWNER / DEVELOPER: North 37th, LLC 1625 N. Waterfront Pkwy. Ste. 220 Wichita, KS 67206 316-634-6600 Alvin Paul Jackson

NOTES

1. The development shall be designed to be aesthetically pleasing and compatible with the surrounding environment.
2. The development shall be designed to be safe and secure for the public.
3. The development shall be designed to be environmentally sound and sustainable.
4. The development shall be designed to be socially responsible and equitable.
5. The development shall be designed to be economically viable and profitable.

VICINITY MAP

LEGAL DESCRIPTION

The development is located within the City limits of Wichita, Kansas. The development is bounded by Maize Rd to the north, 37th St N to the east, and Walker Ave to the south. The development is divided into 11 numbered parcels. The parcels are situated along Maize Rd to the north and 37th St N to the east. Walker Ave runs along the southern boundary. The plan includes detailed annotations for each parcel, such as dimensions, area, and specific development requirements.

LEGEND

- 1. POWER POLE/ANCHOR
- 2. ELECTRICAL BOX
- 3. FIRE HYDRANT
- 4. WATER VALVE
- 5. TELEPHONE BOX
- 6. FENCE
- 7. DRIVEWAY
- 8. SIDEWALK
- 9. LANDSCAPE PLANTING
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**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council Members

SUBJECT: SUB 2008-80 -- Plat of Westside Church of Christ Addition located on the north side of 47th Street South and west of Meridian. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (9-0)

Background: This site, consisting of one lot on 2.84 acres, is located within Wichita's city limits and is zoned SF-5 Single-family Residential.

Analysis: Sewer services are available to serve the site. A Petition, 100 percent, and a Certificate of Petition have been submitted for water extension. A Drainage Agreement has also been submitted.

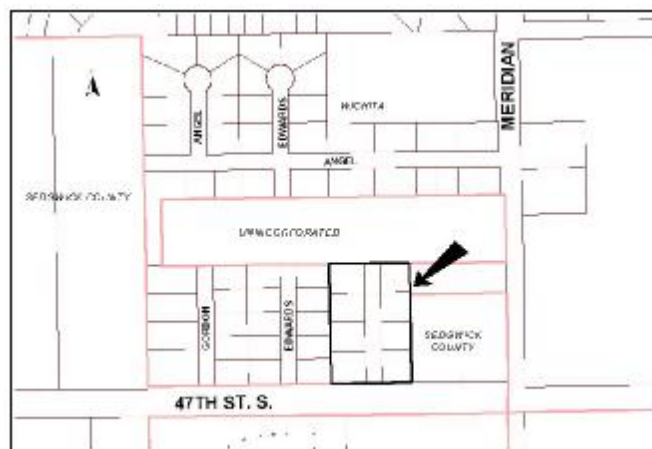
The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petition and Drainage Agreement will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the documents and plat and authorize the necessary signatures.



First Published in the Wichita Eagle on January 30, 2009

RESOLUTION NO. 09-024

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90420 (NORTH OF 47TH ST. SOUTH, WEST OF MERIDIAN) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90420 (NORTH OF 47TH ST. SOUTH, WEST OF MERIDIAN) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90420 (north of 47th St. South, west of Meridian).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Twenty-Four Thousand Dollars (\$24,000) exclusive of the cost of interest on borrowed money, with 43 percent payable by the improvement district and 57 percent payable by the City of Wichita Department of Water and Sewer. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after January 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

WESTSIDE CHURCH OF CHRIST

Lot 1, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 1, Block 1, WESTSIDE CHURCH OF CHRIST shall pay all of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 27th day of January, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

ACCESS DEDICATION

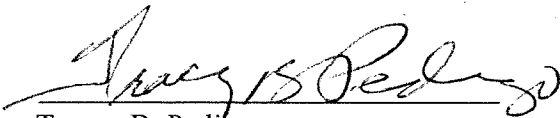
KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Tracy B. Pedigo, being the owner(s) of the following described real estate in Sedgwick county, Kansas to wit:

Lot 10, Block 2, Airport Industrial Park, Wichita, Sedgwick County, Kansas, except the east 10 feet for street right of way, together with vacated May Street.

do(es) hereby dedicate to the public all abutter's right of access across the east line of the above-described real estate except for two locations as approved by the traffic engineer for the City of Wichita.

Executed this 23 day of December, 2008.

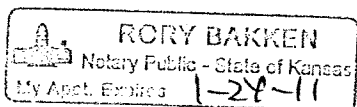

~~Tracy B. Pedigo~~
TRACY B. PEDIGO

Ded 2009-01

STATE OF KANSAS)
) SS
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this 23rd day of December, 2008.

By Tracy B. Pedigo



Seal or Stamp

Rory Bakken, Notary Public
(signature of notary officer)

My appointment expires: 1-24-11 ^{pb}~~2008~~

Submitted to the Wichita-Sedgwick
County Metropolitan Area Planning
Commission and the City Council of
the City of Wichita, Kansas, and
approved by said City Council

This _____, _____.

City Clerk

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council Members

SUBJECT: DED 2009-1 -- Access Dedication located south of Harry Street and on the west side of Hoover Avenue. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.

Background: This Dedication is associated with Lot Split Case No. SUB 2008-101 (Airport Industrial Park Addition). The Dedication is for access control, except for one opening along Avenue.

Analysis: None.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

ACCESS DEDICATION

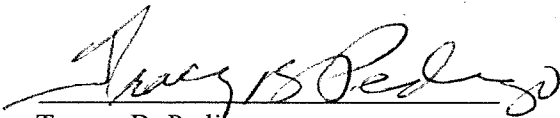
KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Tracy B. Pedigo, being the owner(s) of the following described real estate in Sedgwick county, Kansas to wit:

Lot 10, Block 2, Airport Industrial Park, Wichita, Sedgwick County, Kansas, except the east 10 feet for street right of way, together with vacated May Street.

do(es) hereby dedicate to the public all abutter's right of access across the east line of the above-described real estate except for two locations as approved by the traffic engineer for the City of Wichita.

Executed this 23 day of December, 2008.

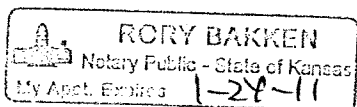

~~Tracy B. Pedigo~~
TRACY B. PEDIGO

Ded 2009-01

STATE OF KANSAS)
) SS
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this 23rd day of December, 2008.

By Tracy B. Pedigo



Seal or Stamp

Rory Bakken, Notary Public
(signature of notary officer)

My appointment expires: 1-24-11 ^{pb}~~2008~~

Submitted to the Wichita-Sedgwick
County Metropolitan Area Planning
Commission and the City Council of
the City of Wichita, Kansas, and
approved by said City Council

This _____, _____.

City Clerk

City of Wichita
City Council Meeting
January 27, 2009

TO: Wichita Airport Authority

SUBJECT: Mid-Continent Airport
North Shuttle Parking Lot

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve Supplemental Agreement No. 4.

Background: On October 23, 2007 the Wichita Airport Authority approved the capital project and a budget of \$4,950,000. A contract for design and bid services was approved by the Wichita Airport Authority with HNTB. A supplemental agreement was prepared with HNTB to authorize construction-related services on January 8, 2008.

Analysis: Due to inclement weather and construction delays, additional time was necessary to complete the project. Additional professional services were required. A supplemental agreement has been prepared by staff to cover these additional services.

Financial Considerations: The cost of the construction-related services is a not-to-exceed amount of \$43,594. The project will be funded with General Obligation bonds paid for with Airport Revenue, and the existing budget will cover all costs.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining sufficient airport parking to serve the aviation community.

Legal Considerations: The supplemental agreement has been approved by the Law Department as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 4.

SUPPLEMENTAL AGREEMENT NO. 4
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE WICHITA AIRPORT AUTHORITY, "OWNER"
AND
HNTB, Inc., "CONSULTANT"

WITNESSETH:

WHEREAS, there now exists a Contract, dated July 18, 2006, between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Wichita Mid-Continent Airport, and Supplemental Agreement #1, dated January 8, 2008, to provide Additional Construction Phase Services for the North Shuttle Parking Lot (NSPL); and

WHEREAS, ARTICLE IV, B. of the referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

Provide additional Contract Administration and Resident Engineering Services for the NSPL Construction Project for the extension of construction from the original final construction completion date of March 4, 2008 to the actual final construction completion date of May 1, 2008.

B. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the professional services as outlined in this Supplemental Agreement shall be made on the basis of actual costs plus a fixed fee of \$0.00; the total including reimbursable expenses shall not exceed \$43,594.00. Refer to Exhibit SA4-A for a detailed fee schedule.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2009.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor White, Director of Airports

ATTEST:

HNTB ARCHITECTURE, INC.
715 KIRK DRIVE
KANSAS CITY, MO 64105

By: *T. Hannon*
Title: Principal Architect

By: *Becky Goff*
Title: SR. VICE PRESIDENT

APPROVED AS TO FORM: *Jerry E. Rebeilly* Date: _____
Director of Law

ATTACHMENTS: EXHIBIT SA4-A – FEE SCHEDULE

Wichita Mid-Continent Airport - Terminal Area Redevelopment Project
Estimated Cost of Consultant's Services
HNTB Architecture, Inc.

11/19/08

Additional Services for North Shuttle Lot Construction
Additional Services Proposal No. 15 (rev 1)
HNTB Project 34912-DS-007

1. Direct Salary Costs

	<u>Hours</u>	<u>Avg Rate</u>	<u>Cost</u>
HNTB Project Manager	0	57.59	\$0
HNTB Clerical	0	21.13	\$0
Total Direct Salary Costs			\$0

2. Labor and General & Administrative Overhead

Percentage of Direct Salary Costs	177.43%	\$0
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3. Total Labor Cost - Subtotal of Items 1 and 2 (correction from SA No. 1) \$0

4. Fixed Fee 15.00% \$0

5. Subtotal of Items 3 and 4 \$0

6. Direct Non-Salary Expenses (HNTB)

Transportation & Subsistence	0	
Printing and Deliveries	0	
Total Direct Non-salary Expenses		\$0

7. Subtotal of Items 5 and 6 \$0

8. Subcontractor Costs

Professional Engineering Consultants	48,994	
Total Subcontractor Costs		\$48,994

Reduction due to unused Labor Cost and expenses from SA 1 -\$5,400

Total Proposed Maximum Cost \$43,594

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Wichita Airport Authority

SUBJECT: Wichita Mid-Continent Airport
Renovations to Hangar 16 (1700 Airport Road)

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget adjustment.

Background: The approved Capital Improvement Program (CIP) includes this project. On September 23, 2008 the WAA approved a project to renovate a portion of Hangar 16 to be the interim facilities for the U. S. Customs and Border Protection (CBP) Federal Inspection Services (FIS) Facility as a result of its relocation due to the current facility demolition to construct the new terminal. The agreement between the Authority and the U.S. Department of Homeland Security requires the Authority to provide space for CBP in a location that will adequately serve the aviation community.

Analysis: During the design process for the CBP FIS facility, the CBP modified its national standard design guidelines that resulted in a much larger facility with a different layout, and which will include significantly more security features. The budget for the CBP FIS facility includes construction, furnishings, renovation of tenant space and construction related services.

Financial Considerations: The total estimated project budget to renovate this facility is \$1,200,000 and will be funded with General Obligation Bonds funded entirely with Airport Revenue. The current budget of \$690,000 was originally established for the CBP renovation before the CBP modified its design guidelines. The significant CBP changes necessitate a budget increase of \$510,000 to renovate this facility.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through improvements to allow uninterrupted airport services to be provided to the aviation community.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget adjustment.

Attachments: None.

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Wichita Airport Authority

SUBJECT: Wichita Mid-Continent Airport
Renovations to Water Works (2100 Airport Road)

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the project initiation and budget.

Background: The approved Capital Improvement Program (CIP) includes this project. The existing Airline Maintenance Building will be demolished to make room for the new terminal building and within that building is currently housed Airport landscaping and landside snow removal equipment and materials. The vacant Water Works building will be renovated to house the relocated landscaping and landside snow removal equipment and materials.

Analysis: The budget for the renovation of the Water Works facility will include both professional services and construction.

Financial Considerations: The total project budget to renovate this facility is \$450,000 and will be funded with General Obligation Bonds funded entirely with Airport Revenue.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through improvements to allow uninterrupted airport services to be provided to the aviation community.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the project and initiate the budget.

Attachments: None.

City of Wichita
City Council Meeting
January 27, 2009

TO: Wichita Airport Authority

SUBJECT: Colonel James Jabara Airport
Drainage Study Supplemental Agreement No. 1

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement and budget adjustment.

Background: Pending tenant development required the study of storm water runoff. On November 20, 2007 the WAA approved the project and contract with Professional Engineering Consultants (PEC). During the study storm water detention basins were deemed the best solution to address storm water runoff and require additional surveys to determine exact size and location.

Analysis: During this study additional airport areas required further study for the placement of a detention pond to facilitate tenant development on the east side of the airport. Staff has prepared a supplemental agreement with PEC for additional study services, design and bid phase services.

Financial Considerations: The project budget for the study was initially established at \$80,000.00 with funding from General Obligation bonds paid for with Airport Revenue. In order to complete the study, design the new detention pond and bid the project a supplemental agreement in the amount of \$50,914.00 has been prepared. This agreement and the estimated construction cost will increase the project budget to \$450,000.00.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through the development of infrastructure to serve the aviation community.

Legal Considerations: The Law Department has approved the agreement as to legal form.

Recommendations/Actions: It is recommended the Wichita Airport Authority approve the agreement, approve the capital budget increase and authorize necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

to the

AGREEMENT FOR CONSULTING SERVICES DATED NOVEMBER 20, 2007

between

THE WICHITA AIRPORT AUTHORITY, WICHITA, KANSAS

Party of the First Part, hereinafter called the

"OWNER"

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

303 South Topeka

Wichita, Kansas

Party of the Second Part, hereinafter called the

"CONSULTANT"

WITNESSETH:

WHEREAS, there now exists a Contract between the two parties covering Consulting Services to be provided by the CONSULTANT in conjunction with a Drainage Study at Colonel James Jabara Airport, Wichita, Sedgwick County, Kansas, and,

WHEREAS, the OWNER now desires to modify the SCOPE OR SERVICES,

WHEREAS, Article IV, Item 24 provides that upon request by the OWNER the CONSUTLANT will prepare an estimate of the fee for the change in services,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

The Scope of Services shall be modified to include the following:

I. SCOPE OF SERVICES (ADDITIONAL).

A. STUDY SERVICES.

1. Conduct drainage study of existing and future airport development for a third possible detention storage option lying in what has been defined as the Middle Watershed in the preliminary report dated September 2008. This option shall specifically consist of modifying the future development plan to include a mirror image of the west side hangar development between T/W C and T/W E, on the east side of the runway. This option also includes future development on the east side as indicated on the Airport Master Plan.
2. Study the possibility of shifting the detention pond onto the property immediately east of the existing airport, located on the existing drainage way. Since this area was not surveyed as part of the original contract, the CONSULTANT will utilize existing USGS maps, City of Wichita LIDAR mapping, and other information that may be available to determine the approximate size and location of the detention facility.
3. Make a preliminary determination of potential permitting requirements caused by moving the detention basin further east in the existing watershed. Wetland delineation is specifically excluded from these services.
4. Attend additional meetings as necessary to gather input, present/review study results and document decisions.
5. Conduct a wetland determination of the southwest detention basin area including the portion of the east ditch of Webb road from K-96 Highway north approximately 550' to the outfall of the storm sewer. This work will include an inquiry to the USACE to get a jurisdictional determination on potential wetlands in the east ditch of Webb Road.
6. Prepare legal descriptions and tract maps to clarify the R/W dedications for K-96 Highway along 29th Street North and to vacate existing R/W on 29th Street North as follows:
 - a. Vacate the contingent dedication for Highway R/W at the northeast corner of K-96 and 29th Street. The area dedicated as part of the Colonel James Jabara Airport Plat, Part of Lot 1, Block A is excessive and the Airport desires to reduce the area of the dedication in order to utilize a portion of this property for a storm water detention basin.

- b. Vacation of the south 30' of public R/W on 29th Street from K-96 east R/W line, east to the ¼ section line of Sec. 4, T27S, R2E. This R/W being the north 30' of said NW ¼ except that portion required for K-96 Highway.
- c. Dedicate R/W for K-96 Highway adjacent to the south line of Lot 1, Block A, Colonel James Jabara Airport plus a portion of Lot 1, lying northeast of the intersection of Webb Road and K-96 Highway. A portion of R/W along 29th Street necessary for K-96 Highway was inadvertently vacated by Vacation Order Film 1170, Page 606 adjacent to the south line of Lot 1.
- 7. Attend Planning Commission meeting to present vacation requests for authorization to execute the orders. Complete all documentation and actions necessary to complete the filing of vacation and dedication orders.
- 8. Monument property corners by field survey for R/W as required for Item 6 above. Document and present horizontal data to OWNER.

B. DESIGN SERVICES. When authorized by the OWNER, the CONSULTANT will proceed with the preparation of Final Engineering Plans, Contract Documents and Cost Estimates for the following elements;

- 1. Southwest detention basin as presented and accepted in the final drainage study report. Design elements shall be completed in accordance with City of Wichita and FAA requirements.
- 2. Conduct field surveys as required to supplement current DTM model and prepare base plans showing topographic features including fences, utilities, and other pertinent data.
- 3. Prepare final design calculations for detention basin sizing based on approved concept presented in drainage study report.
- 4. Prepare final design calculations for sizing the outfall drainage structure.
- 5. Prepare plans and details for grading, temporary and permanent erosion control features, drainage structures, fencing modifications, title sheet, typical sections, cross-sections, construction sequence, summary of quantities and other miscellaneous minor details for final construction documents.
- 6. Coordinate utility relocations with utility companies as necessary to resolve conflicts. Work does not include any design of relocated utilities.
- 7. Meet with OWNER periodically to discuss matters pertinent to the design. Develop minutes of each meeting and distribute copies to involved parties.

8. Prepare necessary permitting for construction of the facility including NPDES and USACE based on preliminary jurisdictional determination for wetlands. Work does not include preparation of any wetland mitigation plan. Permit fees to be billed directly to OWNER and are not included in stated fees.
9. Meet with OWNER for 30% Concept, 90% Office Check and Final plan reviews. 90% review shall include specification and construction cost estimate. Submit (2) sets of plans to OWNER for each review.
10. Make revisions to construction documents based on OWNER/FAA comments and submit two (2) sets of final plans and specifications with updated construction cost estimate.

C. BID PHASE SERVICES. When requested by the OWNER, the CONSULTANT shall perform the following tasks in conjunction with the advertising and bidding.

1. Print Final plans and specifications. Printing costs to be billed directly to OWNER and are not included in state fees.
2. Distribute plans and specifications to two (2) “plan room” sites.
3. Prepare addenda if required.
4. Issue plans, specifications, and addenda to prospective bidders, and OWNER.
5. Maintain plan holder list.
6. Entertain questions from prospective bidders.
7. Facilitate Pre-bid conference.
8. Prepare “official” Engineers Estimate of Construction Cost.

II. TIME OF SERVICES.

- A. CONSULTANT shall commence work stipulated in the Supplemental Agreement upon receipt of Authorization to Proceed from the OWNER.
- B. Original schedule is no longer in effect and the CONSULTANT shall complete the SCOPE OF SERVICES within a mutually agreed upon schedule for Item IA – Study Phase. Item IB - Design Services shall be completed in accordance with the attached schedule (Exhibit C) except for circumstances beyond the control of the CONSULTANT.

III. THE OWNER AGREES.

- A. To pay the CONSULTANT in accordance with the provisions of Article IV of this Supplemental Agreement.
- B. To provide Specifications Part I - Bidding/Contracting Information and Documents and Part II - General Conditions plus applicable technical sections.

IV. PAYMENT PROVISIONS.

- A. Study Phase Services: Payment to the CONSULTANT for performance of Additional Study Phase services shall be on the basis of a Lump Sum amount of \$24,374 .00 (Exhibit A-1). The total lump sum fee for all services covered by the original agreement and Supplemental Agreement No. 1 for Study Phase Services shall be increased from the original contract amount of \$70,824.00 to \$95,198.00.
- B. Design Phase Services: Payment to the CONSULTANT for performance of Design Services shall be on the basis of a separate Lump Sum amount of \$22,000.00 (Exhibit A-1).
- C. Bid Phase Services: Payment to the CONSULTANT for performance of Bid Phase services shall be on the basis of a separate Lump Sum amount of \$4540.00 (Exhibit A-1).

The parties hereunto mutually agree that all provisions and requirements of the original agreement not specifically modified by Supplemental Agreement shall remain in force and effect.

IN WITNESS THEREOF, the OWNER and CONSULTANT have executed this
Supplemental Agreement as of this _____ day of _____, 2009.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____

Karen Sublett, City Clerk

By: _____

Carl Brewer, President "OWNER"

By: _____

Victor D. White, Director of Airports

ATTEST:
P.A.

PROFESSIONAL ENGINEERING CONSULTANTS,

303 S. Topeka
Wichita, Kansas

By: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Director of Law

Date: _____

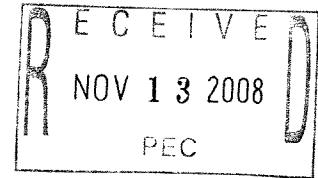
ATTACHMENTS: EXHIBIT A-1 – Fee Schedule
EXHIBIT A-2 – GSI Proposal
EXHIBIT B – Wetland Study Map
EXHIBIT C – Design Schedule

Summary of Engineering Design Fees

<u>Task</u>	<u>Man-hours</u>	<u>Fee</u>	<u>Expenses</u>	<u>Total</u>
<u>Drainage Study Additional Services</u>				
Hydrologic and Hydraulic Analysis/Revise Study to Include Option 3	148	\$11,611	\$120	\$11,731
<u>Sub-Consultant – GSI (Exhibit A-2)</u>				
Wet Land Determination	N/A	\$2,900		\$2,900
OWNER Meetings and Project Coordination	36	\$3,250		\$3,250
Prepare Legals and Tract Maps, Conduct meeting with Planning Commission, Survey to Set R/W pins	82	\$6,393	\$100	\$6,493
Total Lump Sum	266	\$24,154	\$220	\$24,374
<u>Design Phase Services</u>				
Field Surveys	32	\$2,080	\$100	\$2,180
Civil Design Services	264	\$19,820		\$19,820
Total Lump Sum	296	\$21,900	\$100	\$22,000
<u>Bid Phase Services</u>				
Civil/Landscaping Bidding Services	52	\$4,540		\$4,540
Total Lump Sum	52	\$4,540		\$4,540



November 12, 2008



Mr. David Hubbard, P.E.
Professional Engineering Consultants, PA
303 S. Topeka
Wichita, KS 67202-4309

SUBJECT: Proposal for Routine Level 1 Wetland Determination
West 1/2 of the Southwest 1/4 of the Southwest 1/4, Section 33
Township 26 South, Range 2 East, Sedgwick County, Kansas
Colonel James Jabara Airport
Wichita, Kansas
GSI Proposal P087506

Dear Mr. Hubbard:

Geotechnical Services, Inc. (GSI) is pleased to present this proposal to provide a preliminary wetland determination for the referenced project.

GSI is committed to providing a high level of service to its clients. If a change in the proposed scope of work is requested, we are prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions beyond that which is described in this proposal may result in additional risks assumed by your firm and your client and may require adjustments to our fee.

PROJECT DESCRIPTION

We understand that a wetland determination is requested for a tract of land located northeast of the intersection of K-96 and Webb Road, Colonel James Jabara Airport, Wichita, Kansas. The project site encompasses approximately 20 acres in the west half of the southwest quarter of the southwest quarter, Section 33, Township 26 South, Range 2 East, Sedgwick County, Kansas. The project site is a part of a comprehensive drainage study being conducted by Professional Engineering Consultants (PEC).

SCOPE OF SERVICES

Based on preliminary data review, GSI proposes to conduct a Routine Level 1 Wetland Determination. The Level 1 Wetland Determination is a "no on-site evaluation necessary" based on review of available information pertinent to wetland characteristics of the site and surrounding area. If an on-site visit is determined to be necessary or is requested by the United States Army Corps of Engineers (USACE) the scope of services will require amendment and additional expenses will be incurred.



Work completed as a part of the Routine Level 1 Wetland Determination will include:

- The review of National Wetland Inventory Maps, County Soil Maps, USGS Topographic Maps, local Hydric Soils Listings, Stream Gauge Data, aerial photography and other readily available information regarding the project site and surrounding area;
- Preparation and submittal of a Preliminary Wetland Determination report indicating general boundaries of identified wetland and other potential Waters of the United States. Two bound copies of the final report will be submitted upon completion.

SCHEDULE

We can begin our wetland determination upon receipt of your authorization to proceed. The final report will be completed within 10 working days of your notice to proceed. We will provide verbal updates as information is developed in order to expedite the project schedule.

FEES AND CONDITIONS

Our services will be performed in accordance with the attached General Conditions. We propose to complete the professional services for the Routine Level 1 Wetland Determination for the for a lump sum fee of \$1,750.00.

It is possible that the Routine Level 1 evaluation will identify wetlands or waters of the United States to an extent not revealed by the preliminary data review performed in preparation of this proposal. In the event that the scope of services requires modification, work beyond the scope of this proposal will not be performed without the client's consent.

In the event that the Level 1 evaluation indicates the need for on-site wetland identification and delineation, the client will be contacted regarding the required changes and any additional costs that may be incurred.

If determined to be necessary, and approved by the client, GSI will complete a Routine Level 3 Wetland Determination for the lump sum fee of \$2,900.00. The Level 3 Wetland Determination is a combination of "no on-site evaluation necessary" and "on-site evaluation necessary" wetland determination procedures and will include on-site wetland identification and delineation in addition to the Level 1 scope of services.

Please note that our fees are due within 30 days of the presentation of our report. If payment within 30 days is not possible, we should be contacted prior to commencing work to develop an acceptable payment schedule.

LIMITATIONS

Preliminary wetland determinations are subject to review and consent by the USACE. A determination by GSI that no jurisdictional waters of the United States are present on a tract of land is not an authorization to proceed with activities that may impact the aquatic resource.



Routine Level 1 Wetland Determination
Colonel James Jabara Airport
Wichita, KS
GSI Proposal No. P087506
Page 3

CLOSURE

GSI appreciates the opportunity to submit this proposal, and we look forward to working with you on this project. If you have any questions or need additional information, please contact GSI's Wichita office.

Respectfully submitted,
Geotechnical Services, Inc.

A handwritten signature in cursive script, reading 'Gregg L. Armstrong'.

Gregg L. Armstrong
Senior Scientist

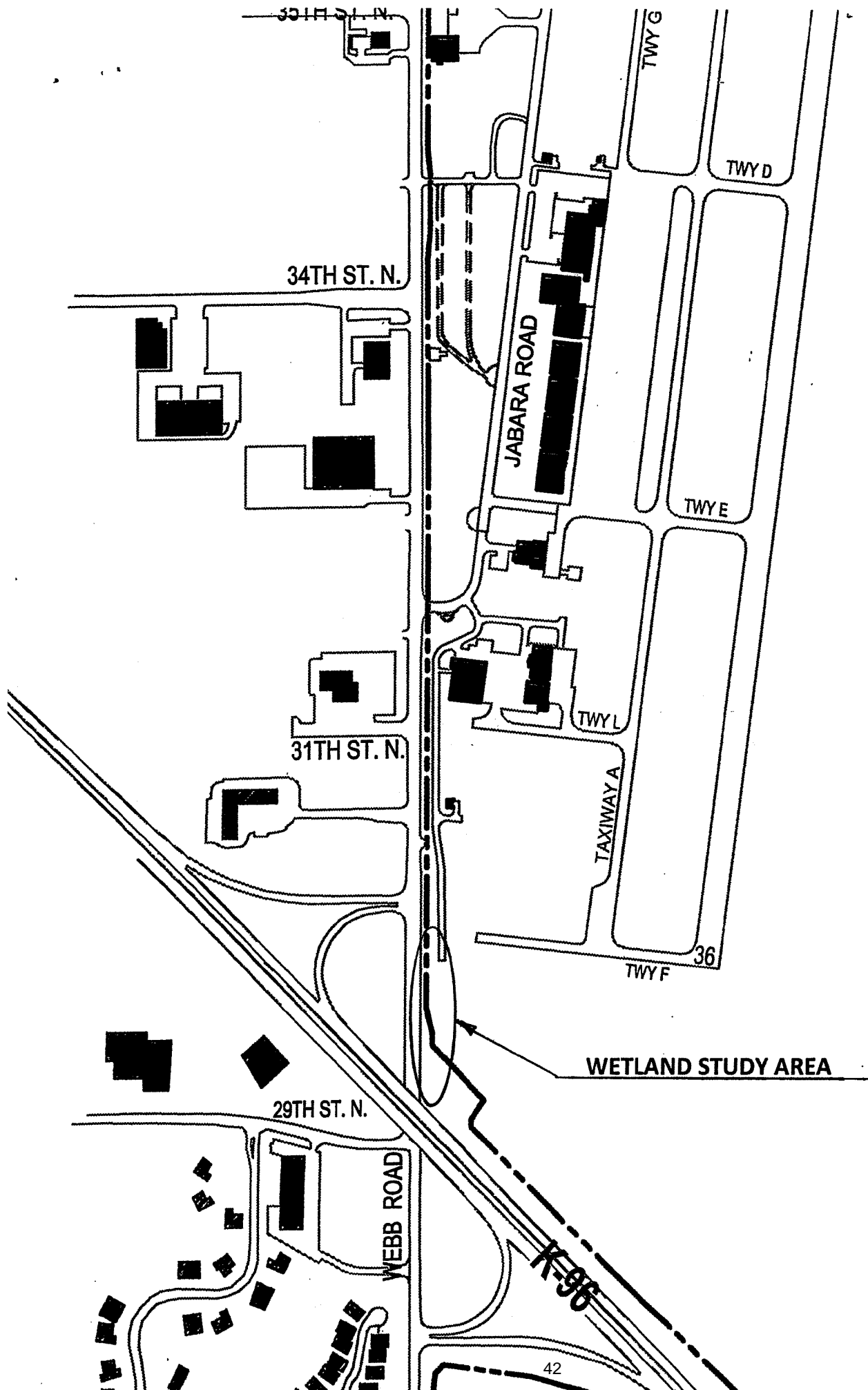
A handwritten signature in cursive script, reading 'David A. Edwards'.

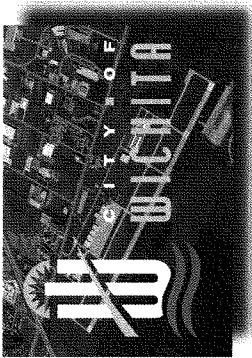
David A. Edwards, P.E.
Senior Vice President

Enclosures: General Conditions and Service Agreement

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EXHIBIT B





CITY OF WICHITA
 WICHITA AIRPORT AUTHORITY/ENGINEERING
 Colonel James Jabara Airport
Southwest Area Detention Basin

PROPOSED SCHEDULE

TASKS	WEEKS																
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
NOTICE TO PROCEED	★																
SURVEY/MAPPING/ BASE PLANS																	
30% CONCEPT DESIGN																	
30% CONCEPT REVIEW/APPROVAL																	
90% CONCEPT DESIGN																	
90% CONCEPT REVIEW/APPROVAL																	
FINAL REVISIONS/ PRINT ORIGINALS FOR ADVERTISING																	

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Wichita Airport Authority

SUBJECT: Colonel James Jabara Airport
Airfield Lighting System Replacement
Change Order No. 1

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the change order.

Background: On May 20, 2008, the Wichita Airport Authority approved a contract with L & S Electric for the replacement of the Airfield Lighting System at Colonel James Jabara Airport.

Analysis: A change order has been prepared to modify the contracted work and adjust quantities.

Financial Considerations: The change order amount of \$11,882.32 is an addition to the original contracted amount of \$602,760.00, representing an increase of approximately two percent. The increase is covered by the existing budget. Funding is expected from AIP Federal Grant funds and General Obligation bonds paid for with Airport Revenue.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining airfield pavements to serve the aviation community.

Legal Considerations: The change order has been approved as to form by the Law Department. FAA concurrence is pending.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Attachments: Change Order #1.

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

CHANGE ORDER
No. 1(FINAL)

Dated 07 December 2008

Owner's Project No. FAA AIP No. 3-20-0089-16 City of Wichita No. 467-053

Project: Airfield Lighting System Replacement at Colonel James J. Jabara Airport

Owner: The Wichita Airport Authority

Contractor: L & S Electric, L.L.C. Contract Date: 24 July 2007

Contract For: Airfield Lighting System Replacement at Colonel James Jabara Airport. The work included in the project is as follows: (a) Replace all taxiway edge lights with L.E.D. lights, (b) Replace all runway edge lights, (c) Replace all (runway & taxiway) conductors. Arrange runway & taxiway lights on separate circuits (currently on one circuit) so they may be connected to separate regulators in the future. Both circuits will be connected to single regulator under this project, (d) Reuse existing raceway systems (taxiway & runway). Provisions are in place for portions of raceway system that may be damaged/not reusable, (e) Relocate FAA equipment on south-west end of Runway 36-18, (f) Install counterpoise system per A/C 150/5340-30B, (g) Remove & re-install two handholes at apron, (h) Remove & install new runway signs, (i) Remove & install new wind cone on east side of Runway 13-18. Install new conductors from regulator room to wind cone, (j) Provide & install vegetation control discs to all taxiway, runway, threshold, and REIL lights, (k) Provide & install a 15kW regulator and associated work in regulator room. Also included is all incidental, supplementary and associated work necessary to complete the above improvements.

To: L & S Electric, L.L.C., Contractor
You are directed to make the changes noted below in the subject contract:

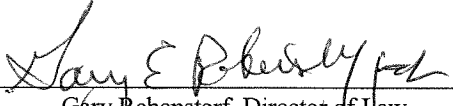
By Direction of the Wichita Airport Authority

Carl Brewer, Owner

Date: _____

Victor White, Director of Airports

Date: _____



Gary Rebenstorf, Director of Law
Approved as to form

Date: _____

Attest

Date: _____

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

SUMMARY

Nature of Change:

	Cost/(Credit)	Additional Contract Time (calendar day)
1.] Replace the cable, ballasts, counterpoise, and edge light fixtures and install vegetation mats for the four taxiway edge lights at the Helipad taxiways.	\$ 3,839.80	0
2.] Install junction boxes one each side at each taxiway to create a pathway for the new circuitry.	\$ 11,124.00	15
3.] Eliminate the Special Handholes in the Apron Pavement.	\$(13,784.00)	0
4.] Eliminate the 8" bore casings at Taxiway A, Taxiway A(west), Taxiway L(West), and Runway 18-36.	\$ 0.00	0
5.] Add S-1 Cutout to the Spare-Relocated Existing Regulator.	\$ 620.00	0
6.] Add pavement removal and replaced at Taxiway L(East).	\$ 1,200.00	0
7.] Power the Wind Cone on the airfield lighting circuit and eliminate the separate Wind Cone Circuit.	\$ (3,130.70)	0
8.] Add Transient Voltage Suppression Systems for REILs and PAPIs.	\$ 4,064.62	0
9.] Adjust Original Contract Quantities to Field Measured Quantities.	\$ 7,948.60	0
10.] Contract Time Suspension.	<u>\$ 0.00</u>	<u>0</u>
TOTALS	\$ 11,882.32	15

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

The changes result in the following adjustment of Contract Price and Contract Time:

3-20-0089-16 Contract Price Prior to This Change Order	<u>\$ 602,140.00</u>
3-20-0089-16 Net Increase Resulting from This Change Order	<u>\$ 11,882.32</u>
Current 3-20-0089-16 Contract Price Including This Change Order	<u>\$ 614,022.32</u>

Contract Time (except regulator installation) Prior to This Change Order	<u>45</u>	Calendar Days
Net Contract Time Increase (except regulator installation) Resulting From This Change Order	<u>15</u>	Calendar Days
Contract Time (except regulator installation) Including This Change Order	<u>60</u>	Calendar Days
Work within the Runway 18-36 Safety Area Contract Time Prior to This Change Order	<u>20</u>	Calendar Days
Work within the Runway 18-36 Safety Area Net Increase Resulting From This Change Order	<u>0</u>	Calendar Days
Work within the Runway 18-36 Safety Area Contract Time Including This Change Order	<u>20</u>	Calendar Days
Contract Time for Regulator Fully Operational Prior to This Change Order	<u>90</u>	Calendar Days
Net Contract Time Increase for Regulator Fully Operational Resulting From This Change Order	<u>0</u>	Calendar Days
Contract Time for Regulator Fully Operational Including This Change Order	<u>90</u>	Calendar Days

The Above Changes Are Approved:

Professional Engineering Consultants, P.A.

By: 

Date: 31 DECEMBER 2008

The Above Changes Are Accepted:

L & S Electric, L.L.C.

Contractor

By: 

Date: 12/29/08

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

The following Change Order is a modification to the Project Plans and Specifications. The Change Order was prepared at the request of the Owner and was necessary for the following:

ITEM NO. 1: Replace the cable, ballasts, counterpoise, and edge light fixtures and install vegetation mats for the four taxiway edge lights at the Helipad taxiways.

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
07 TW Edge Light, Blue LED, Mntd Exist. Can	223	EA	\$455.00	227	4	\$ 1,820.00
11 Vegetation Control	347	EA	\$ 75.00	351	4	\$ 300.00
20 #8 1/C 5KV Primary Cable	41,314	LF	\$ 1.40	41,996	682	\$ 954.80
21 Counterpoise, Trench & B/F, Ground Rods	30,712	LF	\$ 1.70	30,962	250	\$ 425.00
22 ¾"x10' Ground Rod (Lights-Signs-Jboxes)	432	EA	\$ 85.00	436	4	\$ 340.00
GRANT NO. 3-20-0089-16 TOTALS						\$ 3,839.80

There shall be no change in contract time due to this change.

ITEM NO. 2: Install junction boxes one each side at each taxiway to create a pathway for the new circuitry.

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
13 Conduit Trench and Backfill	3,743	LF	\$ 2.20	4,639	896	\$ 1,971.20
14 2" PVC Conduit	3,743	LF	\$ 0.80	4,639	896	\$ 716.80
20 #8 1/C 5KV Primary Cable	41,996	LF	\$ 1.40	42,536	540	\$ 756.00
22 ¾"x10' Ground Rod (Lights-Signs-Jboxes)	436	EA	\$ 85.00	448	12	\$ 1,020.00
25 Junction Can	3	EA	\$555.00	15	12	\$ 6,660.00
GRANT NO. 3-20-0089-16 TOTALS						\$ 11,124.00

There shall be a fifteen [15] calendar day time extension to the original forty-five [45] calendar day contract time for the Airfield work. Contract time for the Regulator work shall not be affected.

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

ITEM NO. 3: Eliminate the Special Handholes in the Apron Pavement.

- A.] Eliminate the new electrical handholes on Taxiways D & E in the Apron PCC pavement as shown on Plan Sheets 5, 6, & 16.
- B.] The existing conduits from the existing light bases at Taxiway D [TA234 & TA237] and Taxiway E [TA249 & TA252] that currently are routed to the existing handhole locations shall be interrupted outside the light bases and capped (8 locations).
- C.] The temporary 2" PVC conduit bores at both locations shall remain as permanent and tied into the existing taxiway lights bases where the conduits are interrupted in item 2 to create a completed circuitry. Install duct markers on each side of the pavement as directed by the Engineer.
- D.] Backfilling of the void left by the removal of the existing handholes shall be done according to Note 5 on Plan Sheet 16.

The net effect of this change is Contract Item No. 18 "Handhole Special" shall be under run in its entirety. PCC pavement shall be paid for as measured per square yard under Contract Item No. 24 "Remove and Replace PCC pavement". All other work associated with this change shall be considered as a part of Bid Item No. 2 "Electrical Demolition, Temporary Work, Phasing, and Misc. Work".

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
18 Handhole - Special	2	EA	\$ 6,892.00	0	-2	\$(13,784.00)
GRANT NO. 3-20-0089-16 TOTALS						\$(13,784.00)

There shall be no other change in cost or change in contract time to the project as result of this change.

ITEM NO. 4: Eliminate the 8" bore casings at Taxiway A, Taxiway A(West), Taxiway L(West), and Runway 18-36. The Owner accepted the Contractor's proposal to modify the installation of the electrical pathways under airfield pavements without the 8" casing with the following conditions:

- A.] The pipe material shall be schedule 40.
- B.] For the north-south installations at Taxiway A and Taxiway B one 2" conduit shall be installed ten feet further out from the conduits that tie in the junction boxes. This conduit shall be far enough away to allow future access into the conduit under the conduit end without hindering the electrical system. The other two conduits are to be tied in the junction boxes. The other conduit not connected to the junction boxes shall be four (4) feet deep.
- C.] For the east-west installations at Taxiway A and the Runway two conduits are to be tied to the new handholes and two other 2" conduits shall be installed ten feet further away from the two conduits that tie into the handholes. The conduit shall be far enough away to allow future access into the ends without hindering the electrical system. The ends of the conduits not connected to the handholes shall be four feet deep.
- D.] For the installation under the west connecting taxiway off of Taxiway L connect one conduit to the light base on each side of the taxiway. The remaining two conduits shall be installed far enough out to allow future access into the ends without hindering the electrical system. The ends of the conduits not connected to light bases shall be four feet deep.
- E.] You proposed using a 4" pilot hole to install conduit that is less than 2-1/2 inches in diameter. Four inches is the industry standard maximum for 2" conduit and it is desired that the pilot hole be less than 4". No pilot, bore, or back reaming larger than 4" will be allowed.
- F.] There shall be no change in contract cost or contract time due to this change.

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

ITEM NO. 5: Add S-1 Cutout to the Spare-Relocated Existing Regulator.

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
04 Series Plug Cutout	1	EA	\$ 620.00	2	1	\$ 620.00
GRANT NO. 3-20-0089-16 TOTALS						\$ 620.00

There shall be no change in contract time due to this change.

ITEM NO. 6: Add pavement removal and replaced at Taxiway L(East). The Owner requested to remove and replaced the cracked PCC pavement for the east fillet on the east Hanger Taxiway Entrance.

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
24 Remove and Replace PCC Pavement	99	SY	\$ 300.00	103	4	\$ 1,200.00
GRANT NO. 3-20-0089-16 TOTALS						\$ 1,200.00

There shall be no change in contract time due to this change.

ITEM NO. 7: Power the Wind Cone on the airfield lighting circuit and eliminate the separate Wind Cone Circuit.

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
13 Conduit Trench and Backfill	4,639	LF	\$2.20	4,671	32	\$ 70.40
14 2" PVC Conduit	4,639	LF	\$0.80	4,671	32	\$ 25.60
20 #8 1/C 5KV Primary Cable	42,536	LF	\$1.40	44,614	2,078	\$ 2,909.20
21 Counterpoise, Trench & B/F, Ground Rods	30,962	LF	\$1.70	32,269	1,307	\$ 2,221.90
25 Junction Can	15	EA	\$555.00	16	1	\$ 555.00
26 #4 2/C with Ground Wire 600V Power Cable	1,714	LF	\$5.20	0	-1,714	\$ (8,912.80)
GRANT NO. 3-20-0089-16 TOTALS						\$ (3,130.70)

There shall be no change in contract time due to this change.

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

ITEM NO. 8: Add Transient Voltage Suppression System (TVSS) for REIL and PAPI services at the relocated FAA Equipment Rack to comply with FAA-STD-19e. A new contract time shall be created for this item:

A new bid item was created for this work as follows:

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>COST EXTENSION</u>
28 TVSS	2	EA.	\$ 2,032.31	\$ 4,064.62

TOTAL COST ITEM NO. 8

\$ 4,064.62

There shall be no change in contract time due to this change.

ITEM NO. 9: Adjust Original Contract Quantities to Field Measured Quantities. The modifications affected the following bid items. The previous quantity column reflects the changes listed in ITEM NO. 1-8 above:

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
06 TW Light, Blue LED, Mntd on New Can	49	EA	\$ 610.00	51	2	\$ 1,220.00
07 TW Light, Blue LED, Mntd on Exist Can	227	EA	\$ 455.00	228	1	\$ 455.00
08 RW Light, White, Mntd on Exist Can	40	EA	\$ 250.00	21	-19	\$ (4,750.00)
09 RW Light, W/Y, Mntd on Exist Can	19	EA	\$ 327.00	38	19	\$ 6,213.00
10 THold/RW Light, G/R, Mntd on Exist Can	16	EA	\$ 327.00	12	-4	\$ (1,308.00)
11 Vegetation Control	351	EA	\$ 75.00	350	-1	\$ (75.00)
13 Conduit Trench and Backfill	4,671	LF	\$ 2.20	3,942	-729	\$ (1,603.80)
14 2" PVC Conduit	4,671	LF	\$ 0.80	3,942	-729	\$ (583.20)
16 8" PVC Bored & (3) 2" PVC pulled in place	625	LF	\$ 20.00	572	-53	\$ (1,060.00)
19 Cable, Conduit, and Splice Markers	6	EA	\$ 100.00	21	15	\$ 1,500.00
20 #8 1/C 5KV Primary Cable	44,614	LF	\$ 1.40	42,767	-1,847	\$ (2,585.80)
21 Counterpoise, Trench & B/F, Ground Rods	32,269	LF	\$ 1.70	30,761	-1,508	\$ (2,563.60)
22 ¾"x10' Ground Rod (Lights-Signs-Jboxes)	448	EA	\$ 85.00	372	-76	\$ (6,460.00)
27 Repair Existing 2" PVC Conduit	10	EA	\$ 1,150.00	27	17	\$ 19,550.00
GRANT NO. 3-20-0089-16 TOTALS						\$ 7,948.60

There shall be no change in contract time due to this change.

ITEM NO. 10: A Contract Time Suspension for the period from midnight Friday night 15 August 2008 to midnight Sunday night 21 September 2008 [Thirty-seven (37) calendar days] due to work added to the project and in order to minimize the impact the Operations of Colonel James J. Jabara Airport. Contract time for both the Airfield Work and the Regulator Work was suspended during this time.

CHANGE ORDER # 1
FAA PROJECT # 3-20-0089-16

SUMMARY OF AFFECTED CONTRACT ITEMS DUE TO CHANGE ORDER No.1:

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>FINAL QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
01 Mobilization	1	LS	\$88,649.20	1	0	\$ 0.00
02 Elec. Demo, Temp, Phasing, & Misc. Work	1	LS	\$25,000.00	1	0	\$ 0.00
03 TW/RW Lights & Signs Regulator (15KW)	1	EA	\$12,950.00	1	0	\$ 0.00
04 Series Plug Cutout	1	EA	\$ 620.00	2	1	\$ 620.00
05 Replace Wind Cone w/ 12 foot Wind Cone	1	EA	\$ 6,990.00	1	0	\$ 0.00
06 TW Light, Blue LED, Mntd on New Can	49	EA	\$ 610.00	51	2	\$ 1,220.00
07 TW Light, Blue LED, Mntd on Exist Can	223	EA	\$ 455.00	228	5	\$ 2,275.00
08 RW Light, White, Mntd on Exist Can	40	EA	\$ 250.00	21	-19	\$ (4,750.00)
09 RW Light, W/Y, Mntd on Exist Can	19	EA	\$ 327.00	38	19	\$ 6,213.00
10 THold/RW Light, G/R, Mntd on Exist Can	16	EA	\$ 327.00	12	-4	\$ (1,308.00)
11 Vegetation Control	347	EA	\$ 75.00	350	3	\$ 225.00
12 Replace RW Hold Sign on New Base	6	EA	\$ 3,800.00	6	0	\$ 0.00
13 Conduit Trench and Backfill	3,743	LF	\$ 2.20	3,942	199	\$ 437.80
14 2" PVC Conduit	3,743	LF	\$ 0.80	3,942	199	\$ 159.20
15 2" PVC Conduit 4-Way Ductbank	80	LF	\$ 22.00	80	0	\$ 0.00
16 8" PVC Bored & (3) 2" PVC pulled in place	625	LF	\$ 20.00	572	-53	\$ (1,060.00)
17 Handhole	5	EA	\$ 4,892.00	5	0	\$ 0.00
18 Handhole - Special	2	EA	\$ 6,892.00	0	-2	\$ (13,784.00)
19 Cable, Conduit, and Splice Markers	6	EA	\$ 100.00	21	15	\$ 1,500.00
20 #8 1/C 5KV Primary Cable	41,314	LF	\$ 1.40	42,767	1,453	\$ 2,034.20
21 Counterpoise, Trench & B/F, Ground Rods	30,712	LF	\$ 1.70	30,761	49	\$ 83.30
22 ¾"x10' Ground Rod (Lights-Signs-Jboxes)	432	EA	\$ 85.00	372	-60	\$ (5,100.00)
23 Radio Control System	1	EA	\$ 3,425.00	1	0	\$ 0.00
24 Remove and Replace PCC Pavement	99	SY	\$ 300.00	103	4	\$ 1,200.00
25 Junction Can	3	EA	\$ 555.00	16	13	\$ 7,215.00
26 #4 2/C w/ Ground Wire 600V Power Cable	1,714	LF	\$ 5.20	0	-1,714	\$ (8,912.80)
27 Repair Existing 2" PVC Conduit	10	EA	\$ 1,150.00	27	17	\$ 19,550.00
28 TVSS	0	EA	\$ 2,032.31	2	2	\$ 4,064.62
GRANT NO. 3-20-0089-16 TOTALS						\$ 11,882.32

For Change Order No. 1 there shall be a fifteen [15] calendar day time extension to the original forty-five [45] calendar day contract time for the Airfield work. Contract time for the Regulator work shall not be affected.

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL JANUARY 27, 2009**

- a. 2009 Condemned Sidewalk and Wheelchair Ramps (north of 63rd Street South, east of 151st Street West) (472-84781/132100/N/A) Traffic to be maintained using flagpersons and barricades. (District I,II,III,IV,V,VI) - \$163,360.00
- b. Mead from Central to 3rd Street North to serve Hintons Sub to East Wichita Addition (south of Central, east of Broadway) (472-84561/766158/620497/490176/668004) Traffic to be maintained using flagpersons and barricades. (District VI) - \$741,800.00
- c. Lateral 275, Main 5, Sanitary Sewer #22 to serve West Central Gardens 3rd Addition (north of Central, west of I-235) (468-84239/744200/480888) Traffic to be maintained using flagpersons and barricades. (District IV) - \$89,700.00

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council

SUBJECT: Mental Health Court Contract

INITIATED BY: Municipal Court

AGENDA: Consent

Recommendation: Approve the contract and authorize the necessary signatures.

Background: The Bureau of Justice Assistance sought joint grant applications from eligible applicants seeking to plan and implement an adult collaboration program for individuals with mental illness who come into contact with the criminal justice system. The City of Wichita Municipal Court, Law Department, and COMCARE of Sedgwick County proposed the Wichita/Sedgwick County Justice Collaborative Alternative Treatments and Interventions for Consumers (ATIC). ATIC will address the mental health issues of citizens in the criminal justice system. The purpose of ATIC is to identify arrestees with mental illness pre- and post-booking that would benefit from alternatives to typical incarceration or court sanctions.

The City of Wichita was awarded \$238,428 to develop a strategic plan and implement a City of Wichita Mental Health Court.

Analysis: The Bureau of Justice Statistics on Mental Health Problems of Prison and Jail Inmates indicate that over half of those incarcerated in jails across the country have a mental health problem. Local studies support the finding that individuals with mental illness represent a higher percentage when compared to the general population. A Mental Health Court will address these issues by providing participants the opportunity to receive community-based, outpatient treatment and services 24 hours per day through COMCARE, while providing a highly structured environment with frequent court review hearings to monitor treatment. The grant award includes funding for a qualified mental health professional (QMHP) that will be employed by COMCARE. The QMHP will coordinate mental health treatment and services on behalf of COMCARE. The terms of the agreement with COMCARE have been detailed in the attached contract.

Financial Considerations: The proposed grant application totals \$340,963 the federal share of the grant is \$238,428. In-kind funding of \$102,535 will provide the City's match for this grant. Total salary and benefits for QMHP position over the two year grant period is \$107,580.58. The grant award also includes funding for training and the purchase of a laptop computer for the QMHP.

Goal Impact: The implementation of a mental health court addresses the Safe and Secure Community goal by providing treatment to offenders with mental illness; addressing social support needs, reducing recidivism for the mentally ill offender population, helping reduce incarcerations and court overcrowding.

Legal Considerations: Approved as to form.

Recommendations: It is recommended that the City Council approve the contract and authorize the necessary signatures.

Attachments: Contract and grant documents.

**COMCARE of Sedgwick County
Contract For
Mental Health Court Program Coordinator**

This contract entered into as of this _____ day of _____ 2009, by and between the City of Wichita, a municipal corporation, hereinafter referred to as "City," and Sedgwick County, Kansas hereinafter referred to as "County."

WITNESSETH:

WHEREAS, City is the recipient of a two year grant award from the U.S. Department of Justice (DOJ) for Justice and Mental Health Collaboration Program, award number 2008-MO-BX-0022; and

WHEREAS, in accord with the DOJ grant award, City wishes to contract with County for a Mental Health Court Program Coordinator; and

WHEREAS, County, on behalf of its community mental health center COMCARE, warrants that it is capable of providing the services hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto do agree as follows:

1. Employment: City hereby agrees to engage County as an independent contractor and County hereby agrees to fulfill the purpose, goals and objectives specified in Appendix A – Grant Narrative hereof as an independent contractor.
2. Term: The term of this contract shall be for a period consistent with the grant award document, commencing September 1, 2008, and ending, August 31, 2011. The DOJ grant award term is three years, however funding is only provided for two years of the grant period.
3. Scope: County shall do, perform and carry out Mental Health Program Coordination services in a satisfactory and proper manner, as determined by City and/or DOJ representatives, the contract purpose, goals and objectives as specified in Appendix A.
4. Compensation: City and County expressly understand and agree that in no event shall the total, full and complete compensation and reimbursement, if any, paid hereunder to County for performance of this contract exceed the maximum cash amount of \$107,580.58 for two years for salary and benefits of the Mental Health Program Coordinator. City agrees to reimburse County for the cost of one laptop computer for the Mental Health Court Program Coordinator's use, not to exceed \$2,176. Additionally, City agrees to pay for mental health court training and travel as outlined in the grant award and summarized in Appendix B - Corrected Budget Detail Summary Worksheet. County agrees to cover all other staff related

costs exceeding the amounts and expense categories allocated in the grant. Payments are to be made for actual cash reimbursement upon billing on a monthly basis. All payments require an invoice and receipt of required financial and program progress reports. The parties understand and agree that in the event that the amount of funds City receives from DOJ is less than anticipated, City may decrease the total compensation and reimbursement to be paid hereunder.

5. Indemnification Agreement. Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law.

6. Termination of Contract.

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so

long as the provisions applicable to Billing and Payment have been met by Contractor.

7. Incorporation of Appendices: Appendix A –Grant Narrative and Appendix B – Corrected Budget Detail Summary Worksheet are attached hereto and made a part hereof as if fully set out herein.

IN WITNESS WHEREOF, City and County have executed this contract as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

Thomas G. Winters, Chairman
Board of County Commissioners

Carl Brewer, Mayor

ATTEST:

ATTEST:

Don Brace, County Clerk

Karen Sublett, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Jennifer Magaña, Assistant County
Counselor

Gary E. Rebenstorf, Director of Law

APPENDIX A – GRANT NARRATIVE

Statement of the Problem

In the City of Wichita, Kansas/Sedgwick County metropolitan area, a perfect storm is brewing. The number of persons with mental illness at the root of their offending behaviors has risen, and the criminal justice community is straining to keep up. Mental health-related calls to Wichita Police consume significant amounts of officer time, and the Sedgwick County Adult Detention Facility (SCADF) is recording its highest number of average daily bookings. In recent months, local television and print media have profiled jail inmates with mental illness, and the plight of their families for therapeutic accommodations. Inmates profiled have run the gamut of ages, criminal backgrounds and mental health diagnoses, but the message is the same: provide more mental health treatment options and assign fewer sanctions. COMCARE of Sedgwick County, the community mental health center (CMHC), and the Wichita Municipal Court are at the center of the storm, advocating for criminal justice and mental health collaboration pre- and post-booking.

Located in south-central Kansas, Sedgwick County is the second most populous of all 105 Kansas counties. The United States Census (2006) estimates more than 470,000 residents of diverse ethnic and cultural backgrounds reside within the county. Over 350,000 of which are residents in the City of Wichita, the largest city in the state. Sedgwick County is a rapidly growing region, with steady growth for the past five decades. COMCARE serves all residents of Sedgwick County, regardless of ability to pay, and serves over 13,000 consumers per year. COMCARE is the largest of Kansas's 26 CMHCs, with over 500 employees and eight programs.

The need for mental health jail diversion programs in Sedgwick County was first highlighted in a 2003 study of the county criminal justice system which found seven to ten (7-10) persons with mental illness were booked into the Sedgwick County jail daily¹. A subsequent study completed by Wichita State University (WSU) in 2005 found that 62% of inmates in the SCADF were current or prior COMCARE clients². This is higher than the national rate (42.7%) of inmates that report having previously received mental health treatment by the Bureau of Justice Assistance (BJA)³. In 2006, a sample of daily bookings found three (3) previous or current COMCARE clients were booked on misdemeanor charges daily. In Sedgwick County, these inmates with mental illness have high recidivism rates. The Wichita Municipal Court serves a largely chronic offender population who are repeatedly arrested for conduct based on untreated mental illness and co-occurring substance use disorders. The 2005 WSU study found 96% of inmates sampled had prior arrests. Inmates had, on average, 14 prior arrests. In one case, an inmate with a history of mental illness had 18 prior arrests.

The overrepresentation of persons with mental illness in the jail is just one facet of the

¹ Institute for Law and Policy Planning. (2003, December 31). *Sedgwick County Jail Population/Criminal Justice System Study*.

² Craig-Moreland, Delores & Birzer, Michael. (2005, August 23). *Targeted Sedgwick County Adult Detention Facility Expansion Feasibility Study: Interim Report*. Wichita State University.

³ James, Doris J & Glaze, Lauren E. (2006, September, Revised 2006, December 14). *Bureau of Justice Statistics Special Report: Mental health problems of prison and jail inmates*. United States Department of Justice.

problem of unconstrained growth in the jail population in Sedgwick County. The number of inmate bookings in Sedgwick County has steadily increased over the past four calendar years:

	2007	2006	2005	2004
Average daily bookings	100	96	91	90
Total bookings	36,437	35,291	33,156	32,717

The Sedgwick County Sheriff's Office houses these inmates in a variety of settings to best accommodate the growing population. SCADF, most recently expanded in 2000, has a 1,068 single-bed capacity. By double-bunking 90 beds, SCADF can expand their total capacity to 1,158. The Sheriff's Office also operates a Work Release facility that houses inmates (157 bed capacity), and contracts with neighboring counties to house some inmates. Approximately 180 inmates are housed outside the county daily. As of first quarter, 2008, the average daily inmate population (ADP) at SCADF, Work Release, and out-of-county housing is 1,413. This is in line with previous years: 1,444 ADP in 2007; 1,444 ADP in 2006; and 1,367 ADP in 2005. If current incarceration trends continue in Sedgwick County, WSU estimates SCADF will need to expand again, to a capacity of 1,660 beds by 2010 and 2,400 beds by 2020.

Detention staff are not the only criminal justice personnel coming in contact with these individuals. In 2007, Wichita Police handled 1,957 mental health-related cases. Through the end of March 2008, Police have handled 448 such calls. Not all mental health-related cases result in arrest; in some instances, law enforcement officers are able to recognize that the person they responded to needs mental health services, and will contact COMCARE's Crisis Intervention Services (CIS) 24 hours a day for assistance. Officers personally delivered 533 persons in mental health crisis to CIS for services in 2007; and 133 thus far in 2008.

The local newspaper recently profiled these mental health-related cases, and interviewed the Wichita Police Department. The article reported the average police officer makes \$23 per hour; that mental health-related calls average two hours; and at least two officers are typically involved per call. Based on these figures, the article conservatively estimates Police spent \$180,000 in 2007 on mental health-related calls; resources expended with no guarantee the offender would get help or would force a future police call. As quoted in the local newspaper, Deputy Wichita Police Chief Teri Moses stated "We wish there were more front-end options."⁴

To address community criminal justice issues, Sedgwick County leaders established the Criminal Justice Coordinating Council (CJCC) in 2004. The CJCC is a collaboration of stakeholders from Sedgwick County and the City of Wichita that serve as a planning and advisory council. In November 2005, the CJCC developed the Criminal Justice Comprehensive Master Plan as a strategic approach to reduce county jail use and develop alternatives to incarceration. Recommendations of the plan specifically include creation of a mental health jail diversion program and mental health court.

The community currently has only a post-booking program which provides mental health services, the Sedgwick County Offender Assessment Program (SCOAP). SCOAP is a program of COMCARE, available to inmates as they transition out of jail and back into the community.

⁴ McCormick, Mark. (2008, March 9). *Use mental health funds early to save money later*. The Wichita Eagle: 1B.

SCOAP addresses the mental health needs of jail inmates whose mental illness is at the core of their arresting behavior. Participants receive aggressive outreach; community-based, intensive case management 24 hours a day; and access to treatment, housing, food and financial resources. Since opening in August 2006, SCOAP has served 291 mental health consumers.

Though this program has shown promising results, law enforcement interaction and jail bookings of mental health consumers continue to rise. These persons are often not identified in the post-booking jail diversion process due to their short length of stay at the jail. They may be released into the community post-incarceration without mental health assessment or intervention, housing or transportation at any time of day or night, increasing the risk for recidivism. Lack of housing and transportation resources for these consumers at the time of release from jail also increases the risk of recidivism. In order to decrease the number of persons with mental illness in the criminal justice system, both pre-booking and post-booking programs are necessary.

In partnership with COMCARE, the City of Wichita Municipal Court proposes the Wichita-Sedgwick County Justice Collaborative: Alternative Treatments and Interventions for Consumers (ATIC). ATIC will build upon a decade's worth of City and County partnership to address the issue of mental health consumers in the criminal justice system. The purpose of ATIC is to identify persons with mental illness pre- and post-booking that would benefit from alternatives to typical incarceration or court sanctions. ATIC will utilize two programs to divert persons with mental illness from the criminal justice system: a pre-booking program to include Crisis Intervention Team (CIT) training and a post-booking Mental Health Court (MHC). The goals of ATIC, as identified in the objectives of the FY2008 Justice and Mental Health Collaboration Grant Announcement, are:

- BJA Objective 1: Reduce recidivism of the mentally ill in the criminal justice system.
- BJA Objective 2: Increase the number of criminal justice personnel trained in or using law enforcement-based diversion strategies (through CIT).
- BJA Objective 3: Increase the number of court-based diversion programs and alternative jail diversion strategies (through MHC).
- BJA Objective 6: Increase the quantity and quality of mental health and other services available to mentally ill offenders.

Pre-booking/CIT: To prevent mental health consumers from entering the criminal justice system, Wichita/Sedgwick County proposes implementing CIT training. CIT is a best practice approach, pre-booking diversion program. Diversion occurs at the consumers' point of contact with law enforcement officers. Successful diversion relies heavily on the effective interactions between police and mental health providers. CIT-trained officers who encounter a person exhibiting signs and symptoms of a mental health disorder, or are called to respond to such person, are trained to respond appropriately to and refer the individual for mental health or substance use services through COMCARE or another local service provider. It is estimated that 80 law enforcement officers will be trained on CIT during the project period.

MHC: The MHC will serve offenders in the Municipal Court who are arrested and whose psychological problems contribute significantly to their arresting behavior. The MHC will serve up to 100 participants at any given time. Eligibility criteria include adults who:

- Were previously or are currently diagnosed with a major mood or psychotic disorder;

- Manifest signs of their disorder at the time of arrest, confinement, or court hearings;
- Are charged with misdemeanor offenses through the Wichita Municipal Court;
- And live in Sedgwick County.

Project Design and Implementation

Mental health consumers in the Wichita/Sedgwick County area who come into contact with law enforcement officers or are incarcerated in the county jail will be identified and provided appropriate interventions. Through ATIC, mental health consumers will be identified pre-booking through CIT and post-booking through MHC. All mental health and substance use services will be coordinated through COMCARE. ATIC offers criminal justice and mental health professionals in the Wichita/Sedgwick County area the opportunity to better identify mental health consumers at all levels of involvement with the criminal justice system. ATIC also offers a process by which consumers can be referred to more appropriate or more intensive mental health treatment, rather than traditional criminal justice sanctions.

Pre-booking/CIT: ATIC will build upon current efforts to train officers on CIT in the Wichita/Sedgwick County area. Training will be coordinated and provided to law enforcement officers regarding how to recognize and effectively respond to persons in a psychiatric crisis. Through this grant project, Wichita/Sedgwick County will aim to train at least 80 Wichita Police Officers and Sedgwick County Sheriff Deputies. The long-term goal is to train 25% of all officers in Wichita/Sedgwick County on CIT, per CIT program standard. Training will be a voluntary, and officers can elect to participate in CIT in addition to their standard duties.

Under the CJCC, COMCARE and other community stakeholders have met as a CIT workgroup to study the feasibility of CIT in Wichita/Sedgwick County. In March, 2008, representatives from COMCARE, Wichita Police, Sheriff's Office, Sedgwick County Mental Health Association, Via Christi Health Systems and National Alliance on Mental Illness (NAMI) attended a two-day CIT orientation in Memphis, Tennessee provided by the Memphis Police Department. Planning activities required for the Wichita/Sedgwick County CIT program are minimal, will require a maximum of six months, and include: resource assessment of community agencies that could assist with or participate in training activities and accept referrals of consumers that need assistance; training of select law enforcement officers and CIT council members in basic CIT programming; finalizing the CIT curriculum to be implemented in Wichita/Sedgwick County; and developing training plans and communications plans for interaction with the MHC. The Wichita/Sedgwick County CIT training structure will be modeled after the Memphis, TN CIT program. Public awareness campaigns will be coordinated through the City of Wichita Communications Team and the Sedgwick County Communications and Community Initiatives office.

The primary goals/objectives of CIT training, as outlined in the FY2008 grant announcement, and applicable to CIT include: Reduce recidivism of the mentally ill in the criminal justice system; Increase the number of criminal justice personnel trained in or using law enforcement-based diversion strategies; Increase jail diversion strategies; and increase the quantity and quality of mental health and other services available to mentally ill offenders.

Officers that volunteer for CIT training will receive 40 hours of training in mental illness and the local mental health system. The training will be provided free of charge by COMCARE in partnership with other community providers, consumers, family members, and local law enforcement training experts from Wichita Police and Sedgwick County Sheriff's Office. Training curriculum for the Wichita/Sedgwick County CIT will include:

- Overview of mental illness including: depression, suicide/suicide by cop, personality disorders, mental illness among elderly, and psychiatric medication
- Communication and De-escalation Skills
- Developmental Disabilities
- Civil Commitment and Other Legal Issues
- Homelessness
- Tactical Considerations

Officers trained in CIT will be able to:

- Recognize signs and symptoms of mental illness
- Learn to communicate with a person in crisis with a mental or developmental disability
- De-escalate crisis scenarios with individuals with mental illness
- Transport the individual, if necessary, to an appropriate site for services

Officers trained in CIT will serve as first responders to mental health-related calls in their designated geographic section of the community, or provide back-up services per initial responding officer request. All consumers served by a CIT officer will be offered community-based mental health and/or substance use treatment from COMCARE and receive assistance identifying ancillary social services. A COMCARE case manager will administer all personal treatment plans and will assist consumers in identifying and utilizing resources for housing, vocational assistance, and physical health services. Consumers who decline COMCARE services will be provided a community services referral information form, COMCARE's 24-hour crisis telephone number and the CIT officer's contact information.

MHC: ATIC will build upon years of discussion and planning for a MHC. It has long been recognized by local judges that a MHC would benefit defendants and probationers in the Wichita Municipal Court. Therefore, implementation of the MHC, as recommended in the CJCC Master Plan, would require minimal planning activities. Planning will take a maximum of six months and will be coordinated by a multidisciplinary planning committee to include: one CIT Council member, Municipal Court and City legal staff, COMCARE staff, potential MHC partners and at least one consumer and one family member. This committee will also serve as a review committee for future program evaluation.

Planning activities will be guided by the BJA report: "Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court." Activities will include: resource assessment of community agencies that could assist with or participate in training activities and accept referrals of consumers that need assistance; appointment of MHC team members; hiring and training of treatment provider/program coordinator; training of MHC team members; visiting Akron, Ohio to study the municipal MHC; and development of MHC protocol and guidelines. The Akron MHC, a BJA mental health court learning site, was chosen to visit based on similarities in MHC operations and community similarities. Public awareness and

education campaigns will be coordinated through the City of Wichita Communications Team and the Sedgwick County Communications and Community Initiatives office.

The MHC team will consist of five members: judge, prosecutor, probation officer, defense attorney (all from the City of Wichita), and the Program Coordinator/treatment provider. The MHC program coordinator will be a licensed, master's level, and qualified mental health professional (QMHP). Mental health assessment and case management services will also be available 24 hours a day by COMCARE. In the instance that a MHC participant should require law enforcement assistance, a CIT member would provide first response/services. The primary goals/objectives of the MHC, as identified by the FY 2008 grant announcement, and applicable to the MHC include: Reduce recidivism of the mentally ill in the criminal justice system; Increase jail diversion strategies; and increase the quantity and quality of mental health and other services available to mentally ill offenders. As evidenced by successful mental health courts nationwide, offenders who complete a judge-supervised treatment program are less likely to commit crimes again than those who serve jail time with no treatment intervention.

The MHC will afford participants who have nonviolent criminal charges and suffer from mental illness an opportunity to keep their criminal record free of a conviction for the offense(s) charged. It will also render assistance to persons who have not recognized, acknowledged, or sought help for their mental health problems. The program does this by providing a highly structured environment with frequent contact by providers in the community and frequent court review hearings to monitor treatment. The MHC will have two tracks, a pre-adjudication track for those offenders charged with non-violent offenses and a post-adjudication track for those persons convicted of a non-violent offense. Acceptance will be by referral and review. The key issue for the MHC is whether the alleged criminal activity is related to or caused by mental illness. This will be determined through case review, mental health assessment and team consultation. Participants may have any type of non-violent charge and any type of serious mental illness. The defendant may be a first time offender or have a lengthy record.

The MHC will accept referrals from an array of sources. Identification of persons to participate in the MHC will be imbedded into current jail booking and judicial processes as well as general law enforcement interaction. Upon booking into the detention facility, each inmate is currently screened within 12-18 hours for mental health and medical needs. These mental health professionals, based on results of the mental health screen, may make a referral for assessment for MHC program eligibility. Additionally, SCADF detention personnel may make a referral for assessment of program eligibility. COMCARE also receives a daily jail booking report that is compared to its database of known mental health consumers. Those matches will be also being assessed for participation in the MHC. If not identified at the time of booking, proposed participants may also be referred by the judge, prosecutor, or defense attorney.

Participation in the MHC is voluntary. The MHC defense attorney (or personal attorney of client's choice) will provide informed choice counsel both before and during program participation. If the arrestee agrees to participate in the MHC, the program coordinator will conduct a mental health assessment. The MHC program coordinator, as a QMHP, will conduct the assessment either in the jail or in the community. This will consist of a semi-structured interview based on DSM-IV axis I and II criteria, mini mental status exam, psychosocial history, and a risk assessment. It will also include a review of treatment history, noting past medication

compliance, housing, family support, and language needs. Validated assessment tools will be reviewed and selected during the planning phase.

Other MHC team members will gather additional information about other pending criminal cases. If the defendant is not enrolled in the mental health system, the assessment will serve as the initial intake appointment and the individual will begin receiving services at that time as a condition of the bond. If the defendant is already enrolled, the current treatment team will be notified and involved in the treatment planning and court recommendation process. Based on that interview and collateral sources of information obtained, an individualized treatment plan will be developed. An initial report based on the assessment will include initial treatment recommendations and will be submitted to the MHC. The first hearing will occur at the first available date and any other pending cases or obligations of the defendant will be addressed.

The MHC team will assess whether the defendant is an appropriate candidate for the MHC, and if so will propose to the MHC judge an alternative to traditional handling of the case by placing primary emphasis on the underlying mental health needs, emphasizing a "therapeutic jurisprudence" approach. The usual adversarial approach and focus on the criminal act will be placed in the context of solutions that are designed to help the individual address the mental health and social problems which lead to the behavior causing arrest, warrants or other difficulties. If a resolution of the case is not immediate, conditions of release with a discharge plan and specific mental health treatment obligations are ordered until the next hearing. These conditions also include such stipulations as no contact orders, no weapons, no drinking and no violations of the law. If housing is not immediately available, the MHC will use COMCARE's short-term (48 – 72 hour) crisis stabilization beds when appropriate.

If the defendant agrees to participate in the MHC, he or she will be engaged for a minimum of one year and a maximum of two years. This will include treatment obligations and intensive monitoring by dedicated probation staff assigned to the MHC who have expertise in dealing with mentally ill offenders. This monitoring begins in the courtroom, where the MHC judge reviews the obligations with the defendant and introduces him or her to the probation counselor, who will work with the defendant throughout the duration of his participation in the MHC. The defendant will be assigned a COMCARE case manager, and will receive therapy services from the program coordinator as necessary.

Should a participant have a co-occurring mental health and substance use disorder, an individualized plan for individual or group substance abuse treatment will be developed and provided through COMCARE. COMCARE will provide co-occurring disorders treatment in both individual and group therapy sessions to address mental health and substance abuse needs simultaneously. COMCARE staff are trained in Integrated Dual Diagnosis Treatment (IDDT), an evidence-based practice for dually diagnosed consumers. Research indicates that treating the disorders concurrently produces better results than treating them separately or consecutively. COMCARE's psychiatrist will assess clients for potential medication needs.

The participant's case(s) and review of their compliance will stay in the MHC for up to two years, where the defendant's history, strengths and needs are well known to the MHC judge, probation and treatment staff, and attorneys. Review hearings are held as often as are needed to keep the defendant on track. The MHC will use a long-term problem solving view of the best

interests of the defendant and the public. Mental health records will be stored in COMCARE's electronic medical records database indefinitely. Criminal justice records and mental health records will be stored in separate electronic databases. Upon termination of MHC participation, the records will remain separate.

MHC participants will have weekly review hearings to monitor the effectiveness of interventions, treatment compliance and probation compliance. An initial review hearing will be held to determine if the probationer has connected with the treatment provider and probation officers and if he/she is in compliance with probation conditions and their treatment plan. If there has not been contact with probation and/or the treatment providers, the purpose of the compliance hearing will be to develop a structure and conditions for the defendant to make the necessary connections. Individuals accepted into the program must agree to the terms and conditions of the MHC including:

1. Attend monthly court review hearings;
2. Attend treatment;
3. Be drug and alcohol free during the program;
4. Not violate any laws of the City, State, or Federal government;
5. Pay court costs and fines if applicable;
6. Update address information if they move;
7. Not carry any deadly or dangerous weapons; and
8. Have random urinalysis testing.

As the participant progresses in the program, the MHC judge may order less frequent hearings. Defendants may be eligible for graduation from the MHC after one year of substantial compliance with the terms and conditions of the program. The participant's program may be extended for an additional year or the maximum allowable by City Ordinance for noncompliance with terms and conditions. The main reason to extend an individual's program is upon a clear showing that continued intervention is needed in order to assist the defendant in obtaining and/or maintaining a stable lifestyle. The MHC team will meet prior to the docket and discuss each case. A decision is made whether to recommend termination from the program, or continue treatment to see whether improved performance can be obtained. The MHC team will make every effort to keep participants in the program. If a participant has violated a term/condition of the program, the Judge may impose a sanction. A sample list of possible sanctions includes: verbal reprimands, increased frequency of hearings, short-term incarceration, and discharge from program and continuation of criminal process.

The MHC team will acknowledge the successes participants make while on the program. Each individual on the program may encounter different levels of mental illness, addiction, relationship problems, housing concerns, job concerns, financial hardships, etc. When a participant has done something that deserves notice and appreciation, the team will make a special recommendation to the judge. The MHC judge has a particularly important role in the program. While he/she must maintain impartiality and decorum in the courtroom at all times, he/she may deem it appropriate to praise, clap for participants, and come down from the bench to shake hands with a participant. Though these practices may seem inconsistent with normal courtroom restraint, they do reflect the underlying nature of the MHC. The judge will actively promote and reinforce the successful treatment of participants.

Capabilities/Competencies

The Wichita/Sedgwick County Justice Collaborative: ATIC incorporates key local criminal justice and mental health agencies. The City of Wichita and Sedgwick County frequently collaborate on community programs. Establishment of the CJCC has facilitated in strengthening collaboration between local criminal justice and mental health stakeholders and lends well to successful implementation of ATIC. CJCC membership (voting and non-voting) includes the following representatives:

City of Wichita	Sedgwick County	
Municipal Court	District Court	COMCARE
Chief City Prosecutor	District Attorney	County Manager
City Mayor and Council	Division of Public Safety	Department of Corrections
Police Chief	County Board of Commissioners	County Sheriff

As the applicant, the City of Wichita Municipal Court will coordinate and provide financial grant management services for both ATIC programs (MHC and CIT) as well as provide direct services through the MHC. The Municipal Court will contract with COMCARE to coordinate CIT training and to provide mental health and substance use treatment to consumers served through both programs. The Wichita Municipal Court and COMCARE have a strong working relationship and history of providing alternative sanctions to consumers for over a decade. Examples of prior and current collaboration include: development and implementation of the City of Wichita Drug Court in 1996; developed shared vision for, and implemented SCOAP in 2006; and established the CIT workgroup in 2007. Other ATIC collaborating agencies will provide assistance with ATIC project planning, training and implementation. ATIC collaborating agencies are as follows:

Crisis Intervention Team (Council members)	Mental Health Court (Team members)
COMCARE of Sedgwick County	City of Wichita Municipal Court – Judge
City of Wichita Municipal Court	City of Wichita Municipal Court – Probation
City of Wichita Police Department	City of Wichita Municipal Court – Public Defender
Sedgwick County Sheriff's Office	COMCARE of Sedgwick County
State of Kansas Parole and Re-Entry Office	City of Wichita Law Department
District Attorney's Office	Mental health consumer
Via Christi Health Systems Emergency Room	Consumer family member
NAMI Wichita – Consumer & Family member	

Consumers, advocates and family members will play a vital role in ATIC program planning and review. Consumers and family members will be engaged during the planning process either as CIT or MHC council members or will be solicited to provide insight on program structure. Consumers will have the opportunity to provide feedback during involvement with CIT or MHC,

as well as after direct program treatment. Surveys will be used to collect quantitative and qualitative data from consumers and family members as appropriate.

Should the ATIC project be funded, key activities of CIT and MHC are as follows:

Pre-booking/CIT: Key Activities, Milestones and Responsible Partners		
	Activity/Milestone	Responsible Partner(s)
Planning	Identify and appoint partners to open CIT Council seats	CIT Council
	CIT Council members attend basic CIT training	CIT Council
	Write training plan for law enforcement training	COMCARE; CIT Council
	Establish communication plan between CIT and MHC	COMCARE; Municipal Court
Implementation	Assess/debrief CIT consumer – law enforcement interventions	COMCARE; CIT Council
	Review MHC clients that interact with CIT	All applicable agencies
	Participate in cross-training with MHC	All applicable agencies
	Identify and train law enforcement officers on CIT	COMCARE; CIT Council
Evaluation	Weekly review of CIT cases	COMCARE
	Monthly meeting of CIT Council	COMCARE; CIT Council
	Monthly data reports to CIT Council and program evaluator	COMCARE
	Quarterly joint meeting of MHC and CIT Council	All applicable agencies
	Quarterly reports to CJCC	COMCARE; CIT Council
	Annual reports to City Council and County Commission	COMCARE; CIT Council
	Periodic reports to BJA, governing bodies and stakeholders	COMCARE; Municipal Court

MHC: Key Activities, Milestones and Responsible Partners		
	Activity/Milestone	Responsible Partner(s)
Planning	Select MHC team members	Municipal Court
	Hire MHC coordinator	COMCARE; Municipal Court
	MHC team attend mental health court training	MHC Team
	MHC team visits Akron, Ohio to view MHC	MHC Team
	Review City Ordinances and pursue revision as necessary	Municipal Court
	Develop necessary contracts/Memorandum of Understanding	Municipal Court; COMCARE
	Finalize MHC program protocols	MHC Team
Implementation	Identify, assess and enroll MHC participants	All applicable agencies
	Participate in cross-training with CIT	All applicable agencies
Evaluation	Weekly review of MHC caseload	MHC Team
	Monthly data reports to CIT Council and program evaluator	MHC Coordinator
	Quarterly joint meeting of MHC and CIT Council	All applicable agencies
	Annual reports to City Council and County Commission	Municipal Court; MHC Team
	Periodic reports to BJA, governing bodies and stakeholders	Municipal Court; COMCARE

It is anticipated that barriers will be encountered while working through planning and implementation of ATIC's programs. Potential barriers, and strategies to overcome, include:

- Developing and sustaining multi-agency collaboration and community partnerships. Strategies include: development of equal partners, regular meetings, shared benefits, building trust, willingness to change, commitment from leadership, recognition of obstacles, clear understanding of the purpose, and memorandums of understanding.
- Legal and legislative barriers. Strategies include: developing eligibility criteria and memorandums of understanding that respect the rights of individuals and identifying legislative constraints and working with governing bodies and state legislators to make adjustments as necessary.
- Information sharing. Strategies include: identification of information sharing needs and developing appropriate interfaces between the collaborating agencies and CIT/MHC.

Impact/Outcomes, Evaluation, and Sustainment

Performance measures for the ATIC program will be collected as required in the Justice and Mental Health Collaboration Program FY2008 Grant Announcement. The CIT program will collect data required under objectives 2, 3 and 6. The MHC program will collect data required under objectives 1, 3 and 6. This data will be collected by COMCARE and Municipal Court, and documented in a variety of ways. A general CIT-interaction form will be filled out for each consumer served by the CIT. The consumer will be assigned a "study ID" to ensure privacy. The CIT data collection form will be modified from a sample form from the Denver, Colorado CIT.

Additionally, a general MHC-interaction form will be filled out for each MHC participant. The consumer will be assigned a “study ID” to ensure privacy. The MHC-interaction form will be modified from the NIJ-BJA Mental Health Court Evaluation Study Referral Data Sheet in the BJA “Guide to Collecting Mental Health Court Outcome Data”. Data collected from these forms will be forwarded on a monthly basis to the existing CJCC Criminal Justice Management Analyst. The CJCC Management Analyst currently collects and analyzes criminal justice data for the Wichita/Sedgwick County initiatives and provides regular updates on programs administered.

Data collected from consumers, families, law enforcement, and stakeholders will consist of surveys and tracking activity attendance. Measurements will include tracking the volume of referrals from community partners, frequency of participation in stakeholder meetings and stakeholder surveys. This data will be cataloged by CIT council and MHC Team and forwarded to the CJCC Management Analyst for archive and future review.

Clinical and judicial records will be stored and reported through three separate, existing databases. Consumer demographic and clinical service information will be stored in COMCARE’s PsychConsult electronic medical records database. PsychConsult will generate required grant reports including: number of participants, units of services, frequency of services, appointment completion rate, medications, housing and educational status and referrals made. Legal status is stored separately in the Wichita Municipal Court’s E-Justice database and will generate required grant reports including: number of participants and program status, legal charges, legal status, court dates, disposition dates, recidivism rates. The jail database, ILEADS, will store and generate information about jail admissions. The CJCC Management Analyst will generate reports from ILEADS and provide the information to COMCARE and City staff. All information generated from the above mentioned reports will be archived and presented for future evaluation by the CJCC Management Analyst.

The CIT and MHC will each hold regular program review and evaluation meetings consisting of: weekly administrative review of cases; monthly data and outcome reports to the corresponding oversight committees; and periodic reports to the BJA and other community stakeholders. At each of these data review sessions/presentations, feedback will be documented, programmatic and procedural concerns will be addressed, and changes made as appropriate. At the end of each year, outcome data will be reviewed compared against national trends and similar program outcomes. Presentations will be made to the City Council, Board of Sedgwick County Commissioners and CJCC regarding each of the programs. The MHC and CIT programs will be evaluated separately with the goal of seeking continued funding for the project through the city and county. A joint quarterly meeting will be held to review the two programs, and evaluate cross-training activities. More frequent meetings will occur between CIT officers and MHC team as necessary for consumers that interact with both programs.

To ensure grant funds will not supplant funding that would otherwise be available; each ATIC consumer will complete a financial resource assessment with a case manager to determine eligibility for and to complete applications for federal benefits. COMCARE staff have experience assisting consumers apply for public assistance, but will also be trained in SSI/SSDI Outreach, Access and Recovery (SOAR) beginning summer 2008. SOAR trains case managers to work with the consumer to apply for SSI/SSDI benefits to ensure approval on the first application. Nationwide, communities that have received SOAR training have first application

approval rates of 65-95%. SOAR is based on the Substance Abuse and Mental Health Services Administration's *Stepping Stones to Recovery* Manual.

There will be no charge for participation in the MHC or to receive assistance of a CIT-trained officer. Mental health services, including case management, will be billed according to COMCARE procedures and payment data will be stored in PsychConsult. It is estimated that approximately half of all ATIC consumers will meet the Kansas definition of having SPMI and qualify for Medicaid-reimbursable, community-based services. Participants that do not meet criteria and do not have a medical care funding source will be charged for services based on a sliding scale. COMCARE does not deny services based on inability to pay for services. Federal funding will be used solely to pay for CIT and MHC training, administrative and personnel costs that may not be billed to third-party payer sources such as Medicaid and Medicare.

APPENDIX B

Corrected Budget Detail Summary Worksheet

Breakdown each category (A – I) into Federal and local share.

Category	Total	Federal	Local
A. Personnel	\$223,002	\$115,986	\$107,016
B. Benefits	\$39,908	\$39,908	-0-
C. Travel/Training	\$ 22,923	\$22,923	-0-
D. Equipment	\$10,472	\$10,472	-0-
E. Supplies	\$30,000	\$30,000	-0-
F. Construction	-0-	-0-	-0-
G. Treatment Costs	-0-	-0-	-0-
H. Other Costs	\$8,700	\$8,700	-0-
I. Indirect Costs	\$10,439	\$10,439	-0-
Total Project Costs	\$345,444	\$238,428	\$107,016

Federal Request \$238,428

Non-Federal Amount \$107,016

Budget Narrative

Total program costs based on receiving a planning and implementation grant. The City of Wichita/COMCARE match is in kind labor through personnel that will staff/coordinate the Mental Health Court.

Budget Detail and Narrative Worksheet

A. Personnel

Grant Funded Salaries		
Name/Position	Salary Computation	Cost
Part-Time Prosecutor Range C43	\$20,700 x 2 years x 100%	\$41,400
Qualified Mental Health Professional	\$37,293 x 2 years x 100%	\$74,586
Total 100% Salaries		\$115,986
In-Kind Salaries		
Bryce A. Abbott Municipal Court Judge Division II	\$ 95,321 x 25% x 2 years	\$ 47,660
Donte Martin Coordinator/ Assistant to Director	\$ 57,616 x 5% x 2 years	\$ 5,760
Probation Officer	\$ 39,620 x 35% x 2 years	\$27,734
Mary McDonald Assistant City Attorney/ Prosecutor Supervisor	\$ 86,244 x 5% x 2 years	\$8,624
Program Manager Sedgwick County Offender Assessment Program	\$43,097 x 20% x 2 years	\$17,238
Total In-Kind Salaries		\$107,016

B. Benefits

B. Benefits	
Total 100% Benefits (Prosecutor and QMHP positions)	\$ 39,908

Budget Narrative

Salaries/benefits for personnel involved in the City of Wichita Mental Health Court (MCH). Percentage of time spent working on MCH factored in to obtain personnel costs for staffing MCH. Salaries/benefits listed at 100% to be paid by the grant.

C. Travel/Training

Purpose of Travel	Destination	Item	Computations	Cost
2009 Annual Mental Health Court Conference	Undetermined Destination	Meals	4 team member x \$58/day x 6 days (per diem) per IRS guidelines & City policy.	\$1,392
2010 Annual Mental Health Court Conference	Undetermined Destination	Meals	4 team member x \$58/day x 6 days (per diem) per IRS guidelines & City policy.	\$1,392
Site Visit – Other Mental Health Court	Akron, Ohio	Meals	4 team member x \$49/day x 3 days (per diem) per IRS guidelines & City policy.	\$588
Training of CIT Staff	Wichita, KS	Meals	3 CIT team trainers x \$49/day x 3 days	\$441
Total Meals				\$3,813
Purpose of Travel	Destination	Item	Computations	Cost
2009 Annual Mental Health Court Conference	Undetermined Destination	Lodging	4 team member x \$188/day x 6 days	\$4,512
2010 Annual Mental Health Court Conference	Undetermined Destination	Lodging	4 team member x \$188/day x 6 days	\$4,512
Site Visit – Other Mental Health Court	Akron, Ohio	Lodging	4 team member x \$78/day x 3 days	\$936
Training of CIT Staff	Wichita, KS	Lodging	3 CIT team trainers x \$75/day x 3 days	\$675
Total Lodging				\$10,635
Purpose of Travel	Destination	Item	Computations	Cost
2009 Annual Mental Health Court Conference	Undetermined Destination	Transportation	4 team members x \$525 plus \$40 Taxi to/from Airport	\$2,260
2010 Annual Mental Health Court Conference	Undetermined Destination	Transportation	4 team members x \$525 plus \$40 Taxi to/from Airport	\$2,260
Site Visit – Other Mental Health Court	Akron, Ohio	Transportation	4 team members x \$525 plus \$40 Taxi to/from Airport	\$2,260
Training of CIT Staff	Wichita, KS	Transportation	3 CIT team trainers x \$525 plus \$40 taxi to/from airport	\$1,695
Total Transportation				\$8,475
C. Total Training Costs				
Total Meals				\$3,813
Total Lodging				\$10,635
Total Transportation				\$8,475
Total Training Costs				\$22,923

Budget Narrative

Total costs estimated for MCH staff to attend training sessions and site visits throughout the United States. Costs figured using the City of Wichita Travel and Training Administrative Regulation 3.1 as well as IRS Publication 1542. Both documents were used to figure allowable rates for meals, lodging, and transportation.

D. Equipment

Equipment Costs	
2 ea Dell Latitude Laptop Computers @ \$2,176	4,352

Monthly Access Fees for 24 months	
1 Sprint Aircard @ \$43 monthly for 24 months	1,032
1 Public Safety Record's Mgmt Application @ \$25 per month x 2 years	\$600
1 Outlook email accounts @ \$17 per month x 2 years	\$408
1 Laptop Network Charge @ \$130 per month x 2 years	\$3,120
1 Internet Access Charge @ \$40 per month x 2 years	\$960
Total Equipment Charges	\$10,472

Budget Narrative

Total equipment costs for additional staff necessary to operate MCH

E. Supplies

Supply/Printing Costs	\$ 30,000
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Budget Narrative

Total estimated supply/printing costs necessary to operate MCH and CIT. Includes costs for training (initial, ongoing and cross-training), program marketing materials, program evaluation materials, and CIT officer outreach supplies, and incentives for MHC clients.

F. Other Costs

Registration Fees				Cost
Registration Fees (2009 & 2010 NAMI National Conventions)				\$2,200
Translation Services				2,500
Recognition Ceremony				\$4,000
Total Other Costs				\$8,700

Budget Narrative

Conference registration costs were estimated using rates from the National Alliance on Mental Illness (NAMI) 2008 National Convention. Translation costs incurred will be for translating MHC and CIT program materials and handouts, and are estimated at rate of \$25 per hour. Recognition Ceremony for CIT-trained officers will occur once per project year, as suggested by the Memphis, TN CIT model program

G. Total Indirect Costs

Total Indirect Costs	Indirect Costs
Administrative Charges	\$ 10,439

Budget Narrative

Indirect Costs include administrative fees charged by the City of Wichita Finance Department for grant oversight, check writing, and auditing. Charges figured at 9% of personnel costs not including the in kind match.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council

SUBJECT: Design Build Irrigation System, Linwood Park (District I)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve the contract.

Background: On February 6, 2007, City Council approved the initiation of the 2007 Capital Improvement Program general obligation funding for irrigation systems. On March 4, 2008, City Council rescinded the original bonding resolutions and replaced it with a new bonding resolution. Since that time, the Park and Recreation Department has developed a Request for Proposal (RFP) to select a company best qualified to provide upgrade, replacement and installation of a design build irrigation system for the three Linwood Park softball fields and one football field. The current irrigation system is outdated and in need of replacement.

Analysis: On November 24, 2008, the city received proposals from two vendors. The Staff Screening and Selection Committee (SSSC) met on January 14, 2009 and short listed the firm of Lawn Sprinkler Services to present their proposal to the SSSC on January 15, 2009. The other vendor's proposal was judged non-responsive by the SSSC. The SSSC selected the firm of Lawn Sprinkler Services based on design and construction capabilities. Lawn Sprinkler Services, LLC has provided services to the City of Wichita on several other irrigation projects and has demonstrated performance to provide quality and competent services.

Financial Considerations: The Park Capital Improvement Plan includes \$200,000 in 2007 for irrigation system renovation and replacement. The total cost for the project is \$71,950, within the approved budget and the funding source is General Obligation bonds.

Goal Impact: Investment into irrigation systems on athletic fields will help to ensure quality turfgrass and safe playing surfaces satisfying citizens with recreational opportunities and improving quality of life as citizens receive a positive return on their investment.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the contract and authorize the necessary signatures.

Attachments: Contract with Lawn Sprinkler Services, LLC

C O N T R A C T

THIS AGREEMENT made and entered into this 27th day of January, 2009, by and between the **CITY OF WICHITA**, a municipal corporation, hereinafter known as “**CITY**”, and **LAWN SPRINKLER SERVICES, L.L.C.** (Performance Vendor Code Number – 810397-001) whose principal office is at 1527 S. Washington, Wichita, Kansas, 67211, telephone number (316) 303-1200, hereinafter known as the “**CONTRACTOR**”.

WITNESSETH, That for and in consideration of covenants hereinafter set out the **CONTRACTOR** contracts, promises and agrees to and with the **CITY** that **Lawn Sprinkler Services, L.L.C.** will furnish all the material and labor necessary to perform the mechanical, electrical, plumbing, and add alternates and/or options as required by the specifications and work orders for the City of Wichita, for **Design Build Irrigation System for Linwood Park Sports Fields**, Formal Proposal – FP800099 for the Park & Recreation Department, Recreation Division in the City of Wichita, Sedgwick County, Kansas. The bid package, plans, specifications and addenda provided by the City of Wichita as part of the bid letting process for Formal Proposal – FP800099, dated November 4, 2008, and the contractor’s bid, as approved, shall be considered a part of this contract and are incorporated by reference herein, as approved by the City Council on January 27, 2009, which plans, specifications, addenda and bids are on file in the office of the City Purchasing Manager of said **CITY**, and are hereby incorporated and made a part of this contract to the same extend as if fully set out herein.

CONTRACTOR further agrees that the work under this contract shall be completed to the full satisfaction of the City Purchasing Manager of the City of Wichita on or before **April 15, 2009**, for completion. Said work shall be done under the direct supervision of said Purchasing Manager, or such other person as the City Council may direct, and that said Purchasing Manager's decision as to the material used in said improvement and the method in which the work is to be done shall be final and conclusive upon the parties hereto. Working days shall be as defined in the Standard Specifications of the City of Wichita.

CONTRACTOR further agrees that at all times during the prosecution of said improvement **Lawn Sprinkler Services, L.L.C.** will maintain the proper safeguards, barricades and lights on the work and every portion thereof to insure the highest degree of safety to the public, and that **Lawn Sprinkler Services, L.L.C.** will hold the City of Wichita harmless in all suits for damages brought against either of the parties to this

contract on account of the negligent acts, omissions or default of said **CONTRACTOR**, their agents or servants in the prosecution of the work on said improvement.

CONTRACTOR further agrees to maintain said improvement for a period of one (1) year from date of the completion and acceptance of same by the City of Wichita; this maintenance to be done and performed by said **CONTRACTOR** without any expense to the **CITY** whatsoever. **CONTRACTOR** to furnish to the **CITY** any manufacturer's warranty on materials as applicable.

CONTRACTOR shall furnish the **CITY** a good and sufficient bond guaranteeing the completion of said improvement and every part thereof according to the specifications and the bid of said **CONTRACTOR** and the terms of this contract; conditioned further, for the maintenance of said improvements as herein before provided.

CONTRACTOR shall furnish a bond to the State of Kansas in the total amount of this contract; conditioned upon the payment of all material and labor bills incurred in the making of said improvement.

Indemnification and Insurance.

a. **CONTRACTOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—
operations, xcu (explosion, collapse and underground) hazards when
applicable, Product/Completed operations, Broad Form Property Damage,
and Contractual Liability with minimum limits as follows:

Bodily Injury Liability

\$500,000 each occurrence

	\$500,000 each aggregate
Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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CITY shall pay **CONTRACTOR** the following amount for the contract work:

Furnish all labor, material, and equipment for the Design Build Irrigation System for Linwood Park Sports Fields as per specifications of Request for Proposal – FP800099.

TOTAL MAXIMUM CONTRACT AMOUNT: \$71,950.00

The **CONTRACTOR** shall be entitled to payment of 90 percent of its progress estimates every thirty (30) days during the prosecution of said improvement; 10 percent of the total amount being at all times retained until final completion, at which time **CONTRACTOR** shall be entitled to final payment.

If the **CONTRACTOR** fails to complete all requirements identified within these specifications by **April 15, 2009**, it is understood and the **CONTRACTOR** hereby agrees that the amount of five hundred dollars (\$500.00) per calendar day to a maximum of the contract price may be deducted from the moneys due the **CONTRACTOR** for each intervening calendar day any work remains incomplete, not as a penalty but as liquidated damages. **CONTRACTOR** will not be liable if performance failure arises out of causes beyond their control and without fault or negligence of the **CONTRACTOR** (e.g., acts of God, war, fires, floods, freight embargoes). Should a performance failure occur, it will be the responsibility of the **CONTRACTOR** to notify the Purchasing Manager in writing and submit proof of the circumstance responsible for non-performance, the **CONTRACTOR** must re-negotiate delivery schedules.

The **CONTRACTOR**, in performing the work required under this contract, agrees to comply with the provisions of the "Revised Non-Discrimination and Equal Employment Opportunity Statement For Contracts or Agreement" of the City of Wichita, which is incorporated herein by reference and attached as "Exhibit A".

For good cause, and as consideration for executing this contract, the **CONTRACTOR**, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the City of Wichita all right, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the City of Wichita pursuant to this contract.

Independent Contractor. The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.

Compliance with Laws. **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this contract.

No Assignment. The services to be provided by the **CONTRACTOR** under this contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.

Third Party Rights. It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this contract to create in the public or

any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

No Arbitration. The **CONTRACTOR** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

Governing Law. This contract shall be interpreted according to the laws of the State of Kansas.

Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

IN WITNESS WHEREOF the City of Wichita has caused these presents to be signed by its Purchasing Manager and attested by its clerk with the seal of the City of Wichita impressed hereon, and the **CONTRACTOR** has caused these presents to be duly executed the day and year first herein written.

ATTEST:

THE CITY OF WICHITA

Karen Sublett
City Clerk

Melinda A. Walker
Purchasing Manager

APPROVED AS TO FORM:

LAWN SPRINKLER SERVICES, L.L.C.

Gary E. Rebenstorf
Director of Law

Signature

Print Signature Name

CITY OF WICHITA, KANSAS

Title (*Managing Member*)

Carl Brewer, Mayor

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Water and Sewer Improvements at an Unplatted Tract located north of 29th Street North and east of Greenwich Road (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water and sanitary sewer improvements for a new development located north of 29th Street North, east of Greenwich on December 16, 2008.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water and sanitary sewer for a new development located north of 29th Street North, east of Greenwich. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$29,900 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water and sanitary sewer improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

UNPLATTED TRACT

THIS AGREEMENT, made this _____ day of _____, 2009, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90411 serving Unplatted Tract "A" (north of 29th Street North, east of Greenwich) (Project No. 448 90411).

MAIN 29, WAR INDUSTRIES SEWER serving Unplatted Tract "A" (north of 29th Street North, east of Greenwich) (Project No. 468 84560).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Unplatted Tract "A" and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

- Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90411	<u>\$11,600.00</u>
Project No. 468 84560	<u>\$18,300.00</u>
TOTAL	<u>\$29,900.00</u>

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 - 2. Additional design services not covered by the scope of this agreement.
 - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 - 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

N. Brent Wooten, President

ATTEST:

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each in-

involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
 - a. Plan Development for the water improvements by **February 23, 2009**.
(Project No. 448 90411).
 - b. Plan Development for the sewer improvements by **February 23, 2009**.
(Project No. 468 84560).

Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Via Christi – West Campus Addition (east of 151st Street West, north of 21st) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water and sanitary sewer improvements in Via Christi – West Campus Addition on September 23, 2008.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water and sanitary sewer in Via Christi – West Campus Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$144,900 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water and sanitary sewer improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

VIA CHRISTI – WEST CAMPUS ADDITION

THIS AGREEMENT, made this _____ day of _____, 2009, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the “CITY” and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the “ENGINEER”.

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90402 serving Lot 1, Block A; Lot 1, Block B, Via Christi – West Campus Addition (east of 151st Street West, north of 21st) (Project No. 448 90402).

WATER DISTRIBUTION SYSTEM NO. 448 90404 serving Lot 1, Block A; Lot 1, Block B, Via Christi – West Campus Addition (east of 151st Street West, north of 21st) (Project No. 448 90404).

MAIN 11, NORTHWEST INTERCEPTOR SEWER serving Lot 1, Block A; Lot 1, Block B, Via Christi – West Campus Addition (east of 151st Street West, north of 21st) (Project No. 468 84543).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Via Christi – West Campus Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

- Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90402	\$ <u>40,300.00</u>
Project No. 448 90404	\$ <u>17,900.00</u>
Project No. 472 84543	\$ <u>86,700.00</u>
TOTAL	\$144,900.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 - 2. Additional design services not covered by the scope of this agreement.
 - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 - 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party benefi-

ciary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

N. Brent Wooten, President

ATTEST:

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each in-

involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
 - a. Plan Development for the water improvements by **February 23, 2009**.
(Project No. 448 90402).
 - b. Plan Development for the water improvements by **February 23, 2009**.
(Project No. 448 90404).
 - c. Plan Development for the sewer improvements by **March 2, 2009**.
(Project No. 468 84543).

Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Design Services for Utility Improvements in the Intrust Bank Arena Area (District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: On August 12, 2008, the City entered into an Agreement with Professional Engineering Consultants, P.A. (PEC) to design improvements to Emporia Street from Waterman to William. The fee was \$64,000.

Analysis: Water Utilities has requested that PEC design sanitary sewer and water improvements associated with the Intrust Bank Arena paving projects. A Supplemental Agreement has been prepared with PEC for the additional design services.

Financial Considerations: Payment to PEC will be on a lump sum basis of \$17,400 and will be paid by the Water and Sanitary Sewer Utilities.

Goal Impact: The projects address the Efficient Infrastructure and Vibrant Downtown Goals by improving the area around the Intrust Bank Arena.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Supplemental Agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement

SUPPLEMENTAL AGREEMENT
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED AUGUST 12, 2008
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated August 12, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **Emporia Street from Waterman to William** (Project No. 472 84744).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

- **St. Francis from William to Douglas** - remove and replace 125' sanitary sewer (OCA #620526)
- **Alley between Topeka & Emporia, north of William** - remove & replace 200' sanitary sewer (OCA #620527)
- **St. Francis, William to Douglas** - replace existing 450' water line (OCA #636208)
- **Emporia & William Intersection** – extend 40' water line north across William (OCA #636209)
- **Topeka & Lewis Intersection** – replace 120' water line across Topeka (OCA #636210)

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by **\$17,400.00.**

OCA #620526	<u>\$ 4,500.00</u>
OCA #620527	<u>\$ 3,500.00</u>
OCA #636208	<u>\$ 5,700.00</u>
OCA #636209	<u>\$ 1,200.00</u>
OCA #636210	<u>\$ 2,500.00</u>

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2009.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

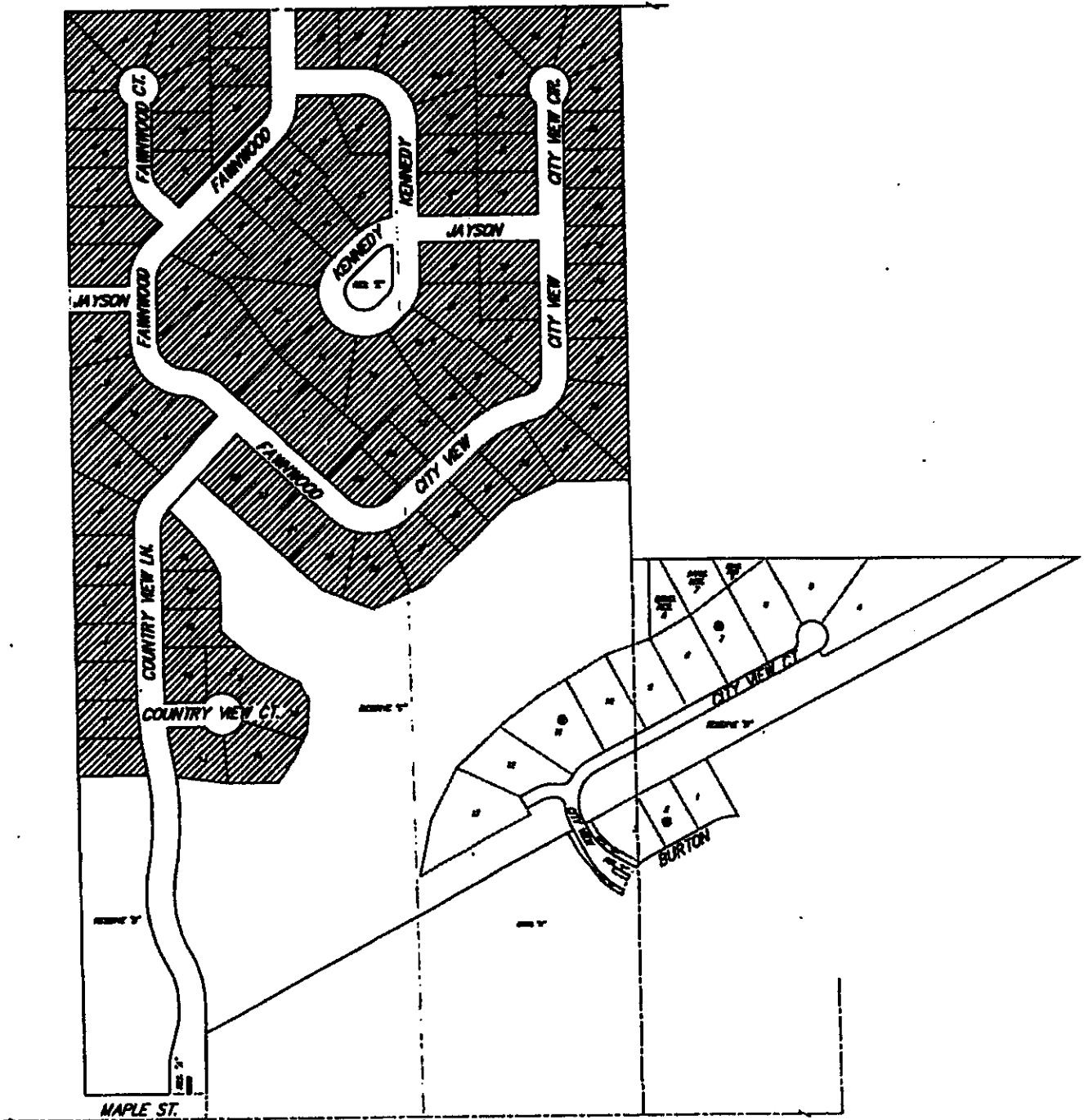
APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

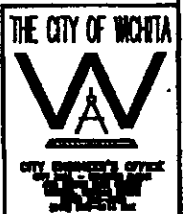
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ATTEST:

THE WOODS ADDITION



BENEFIT DISTRICT 
 (ACTUAL ALIGNMENT TO BE
 DETERMINED BY DESIGN ENGINEER)



CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project

To Revise Project

	X
--	---

1. Prepare in triplicate
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department Public Works	2. Initiating Division Eng	3. Date 1/7/2009	4. Project Description & Location Storm Water Drain for the Woods Addition	
5. CIP Project Number NI-200424	6. Accounting Number	7. CIP Project Date (Year) 2009	8. Approved by WCC Date	
9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised		
As Required				
12. Project Cost Estimate				
ITEM	GO	SA	OTHER *	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainage		\$295,000		\$295,000
Sanitary Sewer				
Sidewalk				
Water				
Other				
Totals		\$295,000		\$295,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the petition, change order and adopt the resolution				

Platting Required	Yes	No
Lot Split	X	
Petition	X	
Ordered by WCC		

Remarks:

100% Petition
* Storm Water Utility
SWD 287
468-84131

Division Head

Department Head

Budget Officer

City Manager

Jim Anderson

Anthony G. Hill

Date

Date

1/8/2009

RECEIVED

DEC 04 '08

STORM WATER DRAIN PETITION
(PHASE 1 AND 2)

CITY CLERK OFFICE

REVISED
12-2-08

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

468-84131
(SWD#287)

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

THE WOODS ADDITION
Lots 1 through 12, Block A
Lots 14 through 53, Block B
Lots 1 through 29, Block C
Lots 1 through 14, Block D

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there be constructed a storm water drainage system to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvements being Nine Hundred Ninety-Five Thousand Dollars (\$995,000), with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after November 1, 2005.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 12, Block A, Lots 14 through 53, Block B, Lots 1 through 29, Block C, and Lots 1 through 14, Block D, THE WOODS ADDITION, shall each pay 1/95 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building which may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
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THE WOODS ADDITION

Lots 1 through 12, Block A
Lots 14 through 53, Block B
Lots 1 through 29, Block C
Lots 1 through 14, Block D

Maple Group, L.L.C.

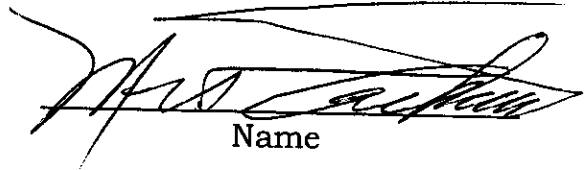
By: 

Jay W. Russell, Member

12/3/08

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

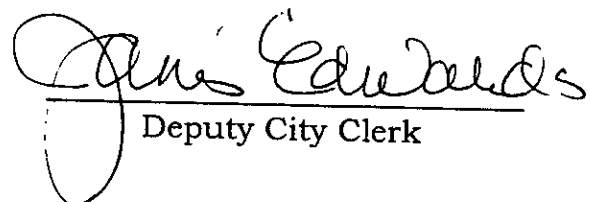

Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 4 day of December
2008.




Deputy City Clerk

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council Members

SUBJECT: Change Order and Petition for Storm Water Drain in The Woods Addition (east of 151st St. East, north of Maple) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Change Order and new Petition.

Background: On August 5, 2008, the City Council approved a construction contract with Nowak Construction, Inc. for drainage improvements in The Woods Addition. A part of the work is the construction of two storm water detention ponds. The Developer has requested that the pond bottoms be treated with bentonite to ensure that they hold water. A new Petition has been submitted to increase the project budget for the cost of the additional work. The signature on the new Petition represents 100% of the improvement district.

Analysis: A Change Order has been prepared for the cost of the additional work.

Financial Considerations: The total cost of the additional work is \$52,808 with the total paid by Special Assessments. The original contract amount is \$836,731. This Change Order represents 6.31% of the original contract amount. The original Petition budget is \$940,000. The new Petition budget is \$995,000.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing drainage improvements for new development.

Legal Considerations: The Law Department has approved the Change Order as to legal form. The Change Order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the Change Order, approve the new Petition, adopt the Resolution and authorize the necessary signatures.

Attachments: Change Order, CIP Sheet, Petition, Resolution and Map.



PUBLIC WORKS-ENGINEERING

December 10, 2008

CHANGE ORDER

To: Nowak Construction Co. Inc.,
Change Order No.: 1
Purchase Order No.: 800970
CHARGE TO OCA No.: 751465

Project: SWD #287; The Woods Addition
Project No.: 468-84131
OCA No.: 751465
PPN: 485356

Please perform the following extra work at a cost not to exceed \$52,807.50

On-site material for the pond liner did not meet the PI requirement of 30. Therefore 162 tons of bentonite mixed at 4% will be applied to 17,061 SY of material in both ponds.

ADD:

Bentonite Treatment 1 LS @ \$52,807.50 = \$52,807.50

CIP Budget Amount: \$995,000.00

Original Contract Amt.: \$836,730.50

Consultant: Baughman

Current CO Amt.: \$52,807.50

Total Exp. & Encum. To Date: \$888,957.60

Amt. of Previous CO's: \$0.00

CO Amount: \$52,807.50

Total of All CO's: \$52,807.50

Unencum. Bal. After CO: \$53,234.90

% of Orig. Contract / 25% Max.: 6.31%

Adjusted Contract Amt.: \$899,538.00

Recommended By:

Approved:

Greg Baalman, P.E.
Construction Engineer

Date

Jim Armour, P.E.
City Engineer

Date

Approved:

Approved:

Contractor

Date

Chris Carrier, P.E.
Director of Public Works

Date

Approved as to Form:

By Order of the City Council:

Gary Rebenstorf
Director of Law

Date

Carl Brewer
Mayor

Date

Attest: _____

RESOLUTION NO. 09-025

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER DRAIN NO. 287 (EAST OF 151ST ST. WEST, NORTH OF MAPLE) 468-84131 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER DRAIN NO. 287 (EAST OF 151ST ST. WEST, NORTH OF MAPLE) 468-84131 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 06-079 adopted on February 14, 2006 and Resolution No. 08-407 adopted on August 5, 2008 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to improve Storm Water Drain No. 287 (east of 151st St. West, north of Maple) 468-84131.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Nine Hundred Ninety-Five Thousand Dollars (\$995,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 2005, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

THE WOODS ADDITION

Lots 1 through 12, Block A
Lots 14 through 53, Block B
Lots 1 through 29, Block C
Lots 1 through 14, Block D

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 12, Block A, Lots 14 through 53, Block B, Lots 1 through 29, Block C, and Lots 1 through 14, Block D, THE WOODS ADDITION, shall each pay 1/95 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 27th day of January 27, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

CITY OF WICHITA
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Acquisition of a portion of 777 North McLean, 2711 West Murdock and 2715 West Murdock for the 9th Street Drainage Outfall Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The 9th Street Drainage Outfall project will provide additional storm water drainage for the area bounded by West Street, Central, 13th Street and McLean. The project requires the acquisition of easements over five tracts. Three of the impacted parcels are owned by Riverside Villages, Inc. Two of the parcels, 2711 and 2715 West Murdock are undeveloped residential lots. The other parcel is 777 North McLean, which is developed with a parking lot. The project will require the removal and replacement of the parking surface and perimeter wall at 777 North McLean. Permanent easements totaling 13,577 square foot and temporary easements totaling 14,246 square feet are required.

Analysis: The proposed acquisition was valued at \$21,646 (\$1.59 per square foot) for the permanent easement and \$4,719 (\$.33 per square foot) for the temporary easement for a total offer of \$26,365. The owner has accepted the offered amount.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$26,865 is requested. This includes \$26,365 for acquisition and \$500 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Tract/aerial maps and real estate purchase agreement.

EASEMENT PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2009 by and between, Riverside Village, Inc., a Kansas not for profit corporation, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a Municipal Corporation, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a permanent easement for stormwater and public utilities for the following described real property, situated in Sedgwick County, Kansas, to wit:

The north 15.00 feet of Lot 13, Sim Park Gardens, Sedgwick County, Kansas, TOGETHER WITH, the south 10.00 feet of the north 25.00 feet of the east 20.00 feet of said Lot 13 TOGETHER WITH the north 22.00 feet of Block 1, Osteopathic Addition, Wichita, Kansas, TOGETHER WITH, the south 30.00 feet of vacated of Murdock Avenue adjoining said Block 1.

2. The Seller does hereby agree to sell to the Buyer by a temporary construction easement for the following described real property, situated in Sedgwick County, Kansas, to wit:

The south 15.00 feet of the north 30.00 feet of the west Half (1/2) of Lot 13, EXCEPT the west 68 feet thereof, Sim Park Gardens, Sedgwick County, Kansas, TOGETHER WITH, The south 15.00 feet of the north 30.00 feet of the west 68 feet of Lot 13, Sim Park Gardens, Sedgwick County, Kansas, TOGETHER WITH, The south 15.00 feet of the north 30.00 feet of the east Half (1/2) of Lot 13, Sim Park Gardens, Sedgwick County, Kansas, EXCEPT the south 10.00 feet of the north 25.00 feet of the east 20.00 feet of said Lot 13 TOGETHER WITH the south 8.00 feet of the north 30.00 feet of Block 1, Osteopathic Addition, Wichita, Kansas; TOGETHER WITH the south 20.00 feet of Lot 1, Block 2, Riverside Health System 3rd Addition.

Said easement shall expire upon completion of the storm sewer system and paving plans and specifications of the City Engineer of the City of Wichita, Kansas.

3. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the permanent and temporary construction easement rights to the above described real property the sum of Twenty-six Thousand Three Hundred Sixty-five Dollars and Zero Cents (\$26,365.00) in the manner following, to-wit: cash at closing.

4. A complete abstract of title certified to date, or a title insurance commitment to insure to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required.

The Title Evidence shall be sent to City of Wichita, KS, Property Management Division for examination by Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in

which to correct any defects in title.

Buyer will order title at its cost.

5. A duly executed copy of this Easement Purchase Agreement shall be delivered to the parties hereto.

6. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before January 31, 2009.

7. The Seller further agrees to grant Buyer the permanent and temporary construction easement rights outlined above and to maintain the property in its same condition, reasonable wear and tear excepted. That portion of the existing parking lot required to be removed by project construction will be saw cut and replaced after construction in a manner consistent with the existing parking lot.

8. Buyer shall be responsible for removal and replacement of perimeter wall as required by the project. Replacement will be in a manner consistent with the existing wall.

9. Construction equipment shall not be parked or stored on the temporary easement area without the prior consent of Seller.

10. Buyer shall have permanent easement and temporary easement rights to the property on closing date.

11. Buyer will pay 100% closing costs.

12. Site Assessment

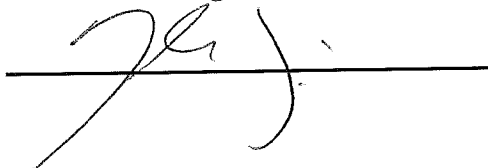
A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted, at Buyer's expense, an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to the seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Riverside Village, Inc.

A handwritten signature in black ink, appearing to be "J. J.", is written over a horizontal line.

BUYER:

By Direction of the City Council

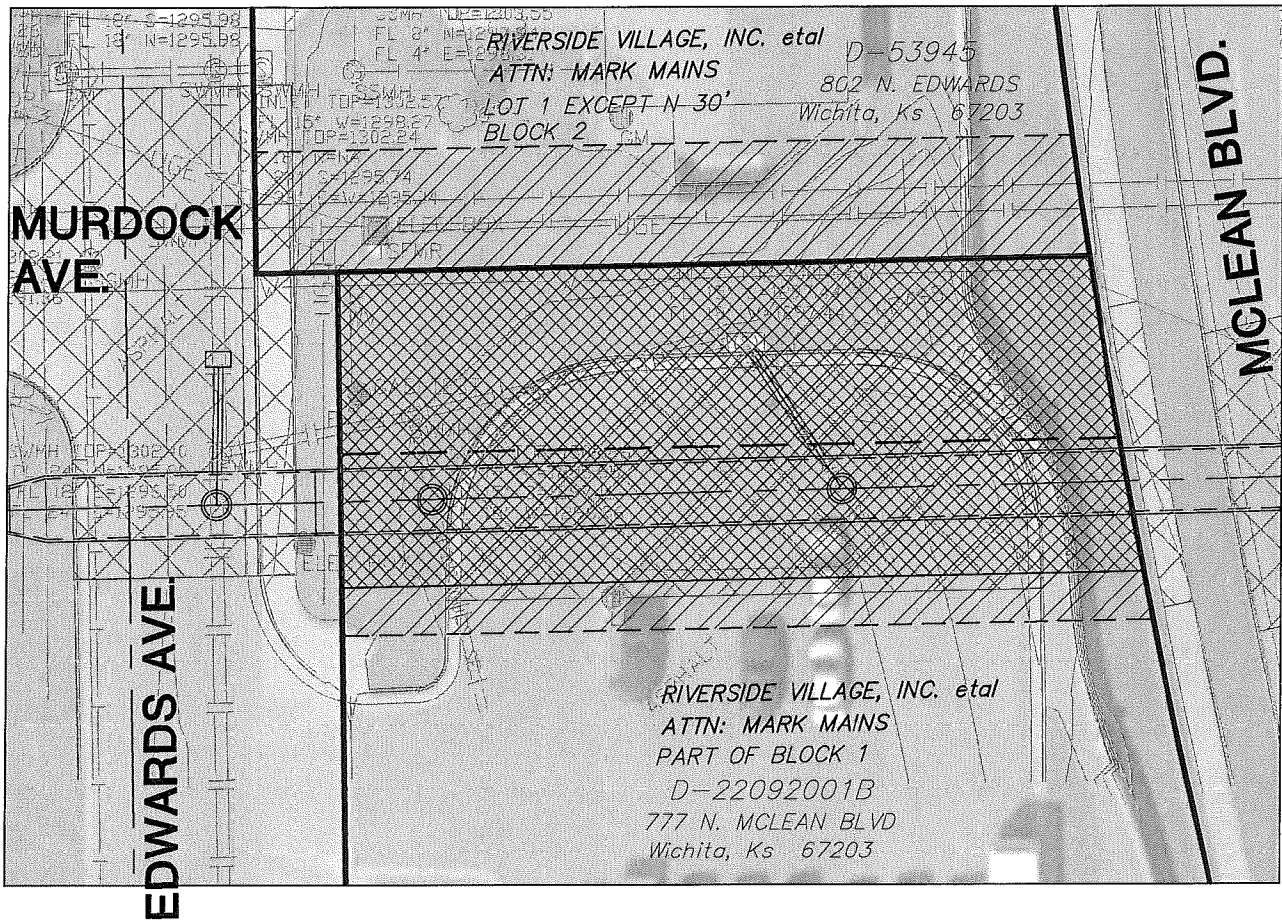
ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law



LEGAL DESCRIPTION:

Right of Entry / Temporary Construction Easement:

The south 20 feet of Lot 1, Block 2, Riverside Health System 3rd Addition, Wichita, Sedgwick County, Kansas, TOGETHER WITH, the south 8.00 feet of the north 30.00 feet of Block 1, Osteopathic Addition, Wichita, Kansas.

LEGAL DESCRIPTION:

Easement Area:

The north 22.00 feet of Block 1, Osteopathic Addition, Wichita, Kansas, TOGETHER WITH, the south 30.00 feet of vacated of Murdock Avenue adjoining said Block 1.

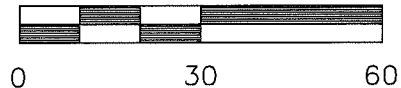
Owner:

Riverside Village, Inc. a Kansas not for profit corporation, et al
Attn: Mark Mains
777 N. McLean
Wichita, KS 67203

Tax Key Property Identification:

D 22092001B

SCALE: 1"=30'



LEGEND:

- Temporary Construction Esmt. Area = 10,496 s.f.
- Easement Area = 9,428 s.f.
- Right of Way / Property line

MKEC
ENGINEERING
CONSULTANTS, INC.

411 N. WEBB ROAD
WICHITA, KS. 67206
316-684-9600

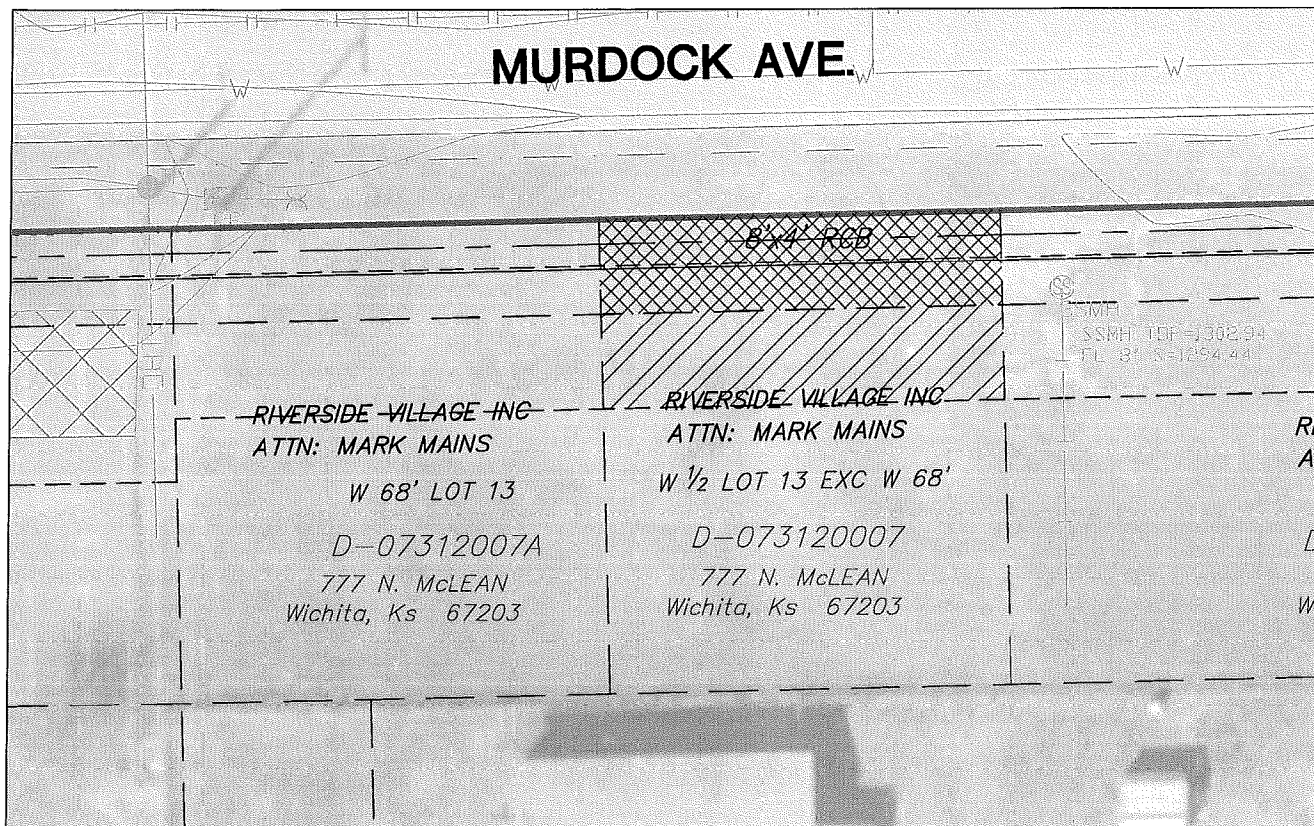
**West Street to Arkansas River
9th Street Storm Sewer Outfall**

PROJECT NAME

TRACT MAP - Easement Exhibit

SHEET TITLE

JRA DESIGN BY:	BDL DRAWN BY:	JRA / JCM CHECKED BY:
July 2008 DATE	06205 v6 JOB NO.	1 / 1 SHEET/OF



LEGAL DESCRIPTION:

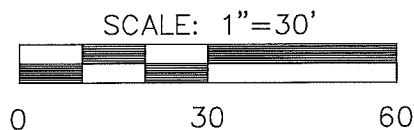
Temporary Construction Easement:

The south 15.00 feet of the north 30.00 feet of the west $\frac{1}{2}$ (half) of Lot 13, EXCEPT the west 68 feet thereof, Sim Park Gardens, Sedgwick County, Kansas.




LEGAL DESCRIPTION:

Easement Area:

The north 15.00 feet of the west $\frac{1}{2}$ (half) of Lot 13, EXCEPT the west 68 feet thereof, Sim Park Gardens, Sedgwick County, Kansas.



LEGEND:

-  Temporary Construction Esmt. Area = 955 s.f.
-  Easement Area = 955 s.f.
-  Right of Way / Property line



Owner:

Riverside Village, Inc. a Kansas not for profit corporation
Attn: Mark Mains
777 N. McLean
Wichita, KS 67203

Tax Key Property Identification:

D 073120007

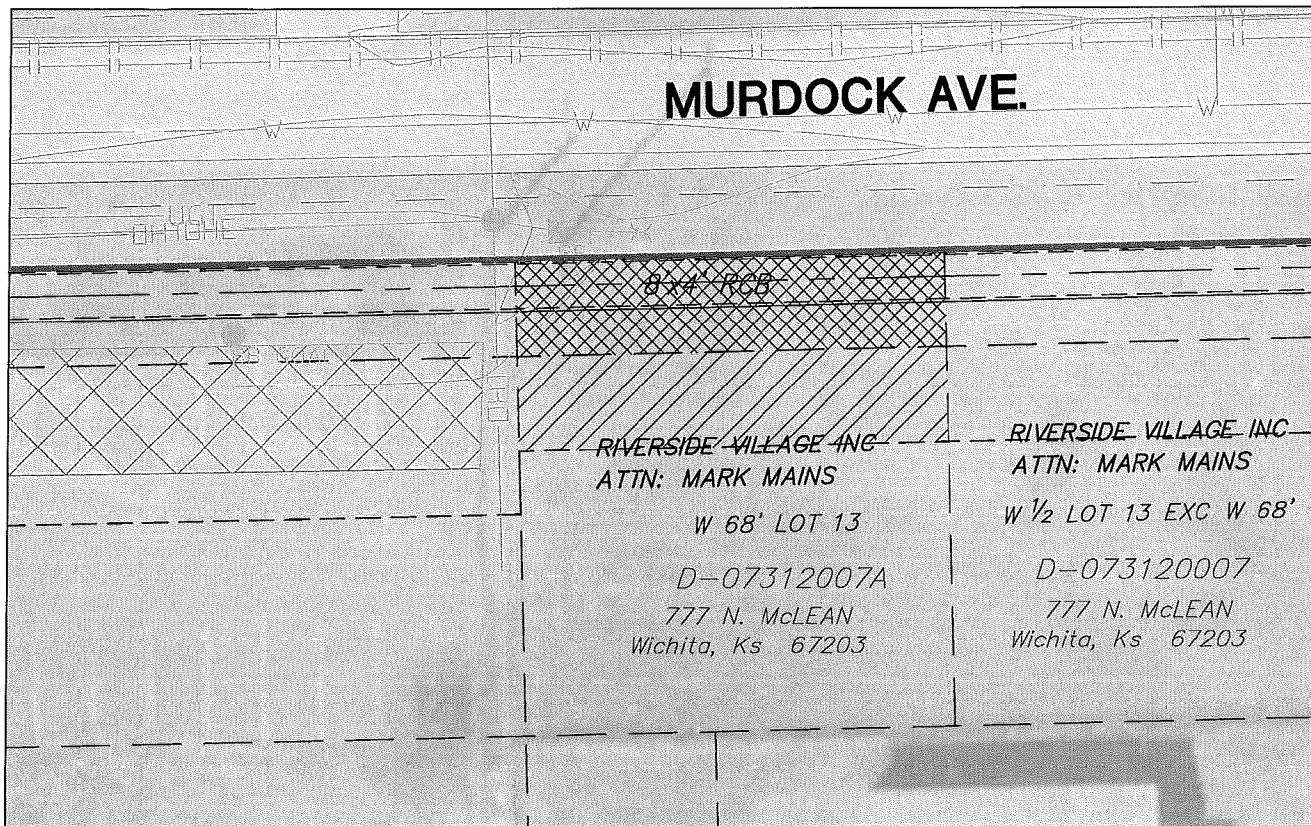
MKEC
ENGINEERING
CONSULTANTS, INC.

411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

**West Street to Arkansas River
9th Street Storm Sewer Outfall**
PROJECT NAME

TRACT MAP - Easement Exhibit
SHEET TITLE

JRA DESIGN BY:	BDL DRAWN BY:	JRA / JCM CHECKED BY:
July 2008 DATE	06205 v4 JOB NO.	1 / 1 SHEET/OF



LEGAL DESCRIPTION:

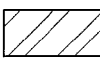
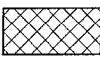
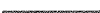
Temporary Construction Easement:

The south 15.00 feet of the north 30.00 feet of the west 68 feet of Lot 13, Sim Park Gardens, Sedgwick County, Kansas.

SCALE: 1"=30'



LEGEND:

-  Temporary Construction Esmt. Area = 1,020 s.f.
-  Easement Area = 1,020 s.f.
-  Right of Way / Property line



LEGAL DESCRIPTION:

Easement Area:

The north 15.00 feet of the west 68 feet of Lot 13, Sim Park Gardens, Sedgwick County, Kansas.

Owner:

Riverside Village, Inc. a Kansas not for profit corporation
Attn: Mark Mains
777 N. McLean
Wichita, KS 67203

Tax Key Property Identification:

D 07312007A

MKEC
ENGINEERING
CONSULTANTS, INC.

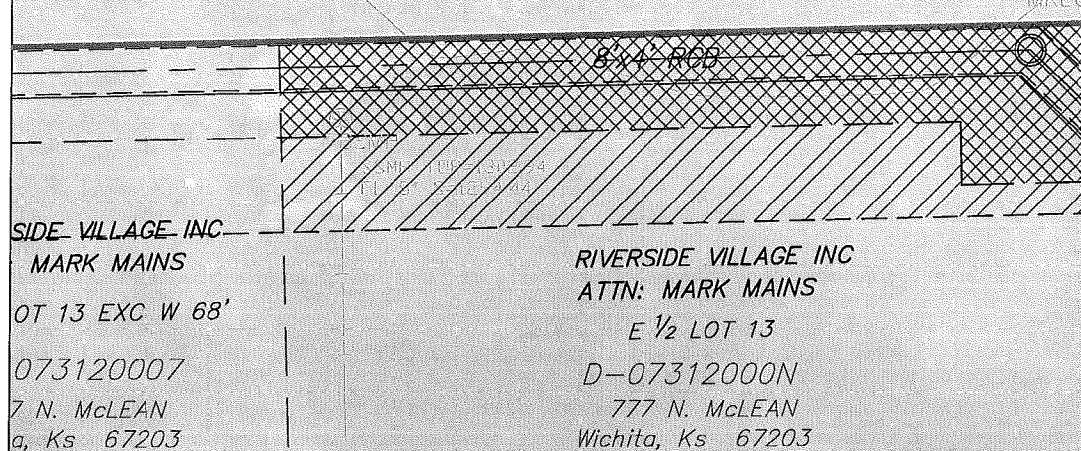
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

**West Street to Arkansas River
9th Street Storm Sewer Outfall**
PROJECT NAME

TRACT MAP - Easement Exhibit
SHEET TITLE

JRA DESIGN BY:	BDL DRAWN BY:	JRA / JCM CHECKED BY:
July 2008 DATE	06205 v3 JOB NO.	1 / 1 SHEET/OF

MURDOCK AVE.



SIDE VILLAGE INC
MARK MAINS
 OT 13 EXC W 68'
 073120007
 7 N. McLEAN
 a, Ks 67203

RIVERSIDE VILLAGE INC
ATTN: MARK MAINS
 E 1/2 LOT 13
 D-07312000N
 777 N. McLEAN
 Wichita, Ks 67203

LEGAL DESCRIPTION:

Temporary Construction Easement:

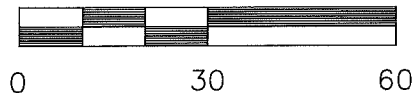
The south 15.00 feet of the north 30.00 feet of the east 1/2 (half) of Lot 13, Sim Park Gardens, Sedgwick County, Kansas, EXCEPT the south 10.00 feet of the north 25.00 feet of the east 20.00 feet of said Lot 13.

LEGAL DESCRIPTION:

Easement Area:

The north 15.00 feet of the east 1/2 (half) of Lot 13, Sim Park Gardens, Sedgwick County, Kansas, TOGETHER WITH, the south 10.00 feet of the north 25.00 feet of the east 20.00 feet said Lot 13.

SCALE: 1"=30'



LEGEND:

- Temporary Construction Esmt. Area = 1,775 s.f.
- Easement Area = 2,174 s.f.
- Right of Way / Property line



Owner:

Riverside Village, Inc. a Kansas not for profit corporation
 Attn: Mark Mains
 777 N. McLean
 Wichita, KS 67203

Tax Key Property Identification:

D 07312000N

MKEC
 ENGINEERING
 CONSULTANTS, INC.

411 N. WEBB ROAD
 WICHITA, KS. 67206
 316 - 684 - 9600

**West Street to Arkansas River
 9th Street Storm Sewer Outfall**
 PROJECT NAME

TRACT MAP - Easement Exhibit
 SHEET TITLE

JRA DESIGN BY:	BDL DRAWN BY:	JRA / JCM CHECKED BY:
July 2008 DATE	06205 v5 JOB NO.	1 / 1 SHEET/OF



Aerial Map



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



PUBLISHED IN THE WICHITA EAGLE ON _____

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE CONSTRUCTION AND IMPROVEMENT OF SANITARY SEWER TO SERVE AN AREA WEST OF 111TH STREET WEST, ON THE NORTH AND SOUTH SIDES OF KELLOGG IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of easement acquisition and land acquisition for the construction of sanitary sewer improvements to serve an area bounded by Hoover on the west, 13th Street North on the North, Smith on the east, and an approximate half mile north of 11th Street North on the south in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A perpetual easement for the construction and maintenance of sanitary sewer in and to the following described tracts, to wit:

The South 10 Feet of the Easternmost 539.96 Feet of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas.

The South 20 Feet of the East 50 Feet of Lot 2, Block A, Horton Addition to Wichita, Sedgwick County, Kansas, said 20 Feet being measured perpendicular to the South line of said Lot 2.

The South 20 Feet of Lot 2, EXCEPT the East 50 Feet of said Lot 2, Block A, Horton Addition to Wichita, Sedgwick County, Kansas, said 20 Feet being measured perpendicular to the South line of said Lot 2.

Commencing at the Easternmost Northeast corner of Lot 1, Block A, Blasi Park, Sedgwick County, Kansas; thence S88°27'03"W, 99.72 Feet along the Easternmost North line of said Lot 1 to the Point of Beginning; thence S88°27'03"W, 425.93 Feet along said North line; thence N01°41'03"W, 15 Feet along the Westernmost East line of said Lot 1; thence N88°27'03"E, 425.93 Feet; thence S01°24'43"E, 15 Feet to the Point of Beginning.

The South 15 Feet of the North 250 Feet of Lot 1, Block A, Blasi Park, Sedgwick County, Kansas, the South line of said North 250 Feet lying 300 Feet South of the South line of U.S. 54 as shown on the recorded plat of said addition.

Commencing at the Northwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M., Wichita, Sedgwick County, Kansas; thence S01°24'43"E, 511.84 Feet along the East line of said Quarter to the Point of Beginning; thence S01°24'43"E, 178.72 Feet along said East line to the North right-of-way of the Burlington Northern and Santa Fe Railroad; thence S75°47'12"W, 20.51 Feet along said right-of-way; thence N01°24'43"W, 183.18 Feet parallel with said East line; thence N88°20'47"E, 20 Feet to the Point of Beginning.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as

to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2009.

CITY OF WICHITA, KS:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PUBLISHED IN THE WICHITA EAGLE ON _____

RESOLUTION NO. _____

A RESOLUTION DECLARING THE NECESSITY FOR
ACQUIRING PRIVATE PROPERTY FOR THE USE OF
THE CITY OF WICHITA IN CONNECTION WITH
PLANNED SANITARY SEWER IMPROVMENTS TO
SERVE AN AREA WEST OF 111TH STREET WEST,
ON THE NORTH AND SOUTH SIDES OF KELLOGG
IN THE CITY OF WICHITA, SEDGWICK COUNTY,
KANSAS

WHEREAS, the governing body has previously authorized the study and
the preliminary design of certain sanitary sewer improvements to serve an area
west of 111th Street West, on the north and south sides of Kellogg

WHEREAS, such study and preliminary design has identified the need to
acquire several parcels of private property in order to properly complete such
improvements; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING
BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. The governing body hereby declares it to be necessary to acquire
certain private property in connection with sanitary sewer improvements to serve
an area west of 111th Street West, on the north and south sides of Kellogg.

SECTION 2. The City Engineer is directed to make or cause to be made a
survey and description of the lands and/or interests to be acquired and to have
such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after
its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this _
_____ day of, _____ 2009.

CITY OF WICHITA, KS:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

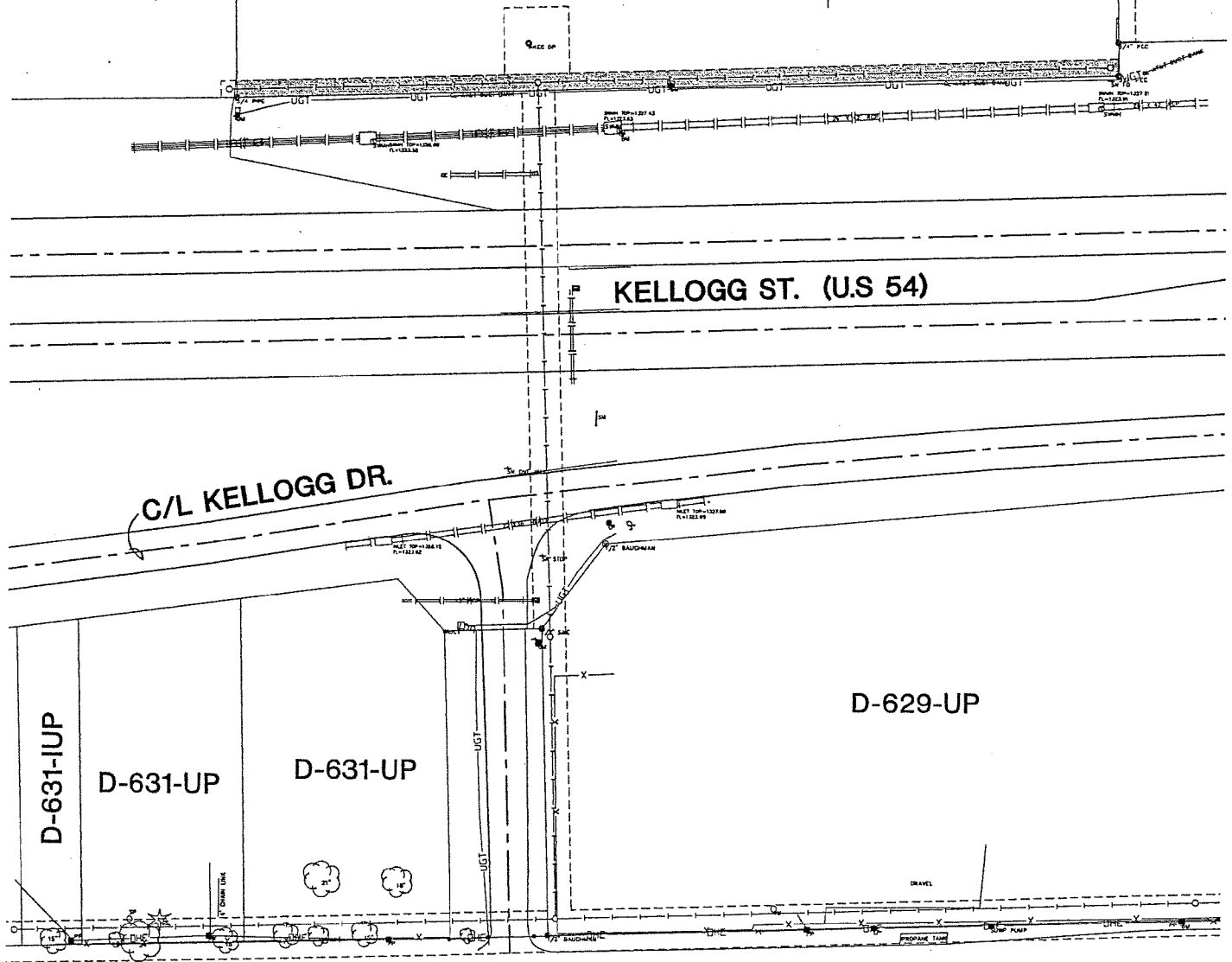
APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

RESTHAVEN GARDNENS

D-731-UP

1



BLASI PARK ADDITION

(A)

Resthaven Gardens

1

The south 10 feet of the easternmost 539.96 feet of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas.

Said parcel of land contains 5,400 square feet, more or less.



SCALE: 1"=50'

MKEC
ENGINEERING
CONSULTANTS, INC.

411 N. WEBB ROAD
WICHITA, KS. 67206
316-684-9600
128

**C.O.W. LATERAL 23, MAIN 13, SWI
SANITARY SEWER PROJECT**

PROJECT NAME

**PROPOSED EASEMENT
RESTHAVEN GARDENS**

SHEET TITLE

DESIGN BY:

DECEMBER 2007

DRAWN BY:

07428


CHECKED BY:

1 / 1

J:\CIVIL\07428 LAT 23\DWG\SAN\PROPOSED EASEMENTS.DWG

Said parcel of land contains 1,025 square feet, more or less.

SCALE: 1"=50'



0 50 100 150

LARK 3RD ADDITION



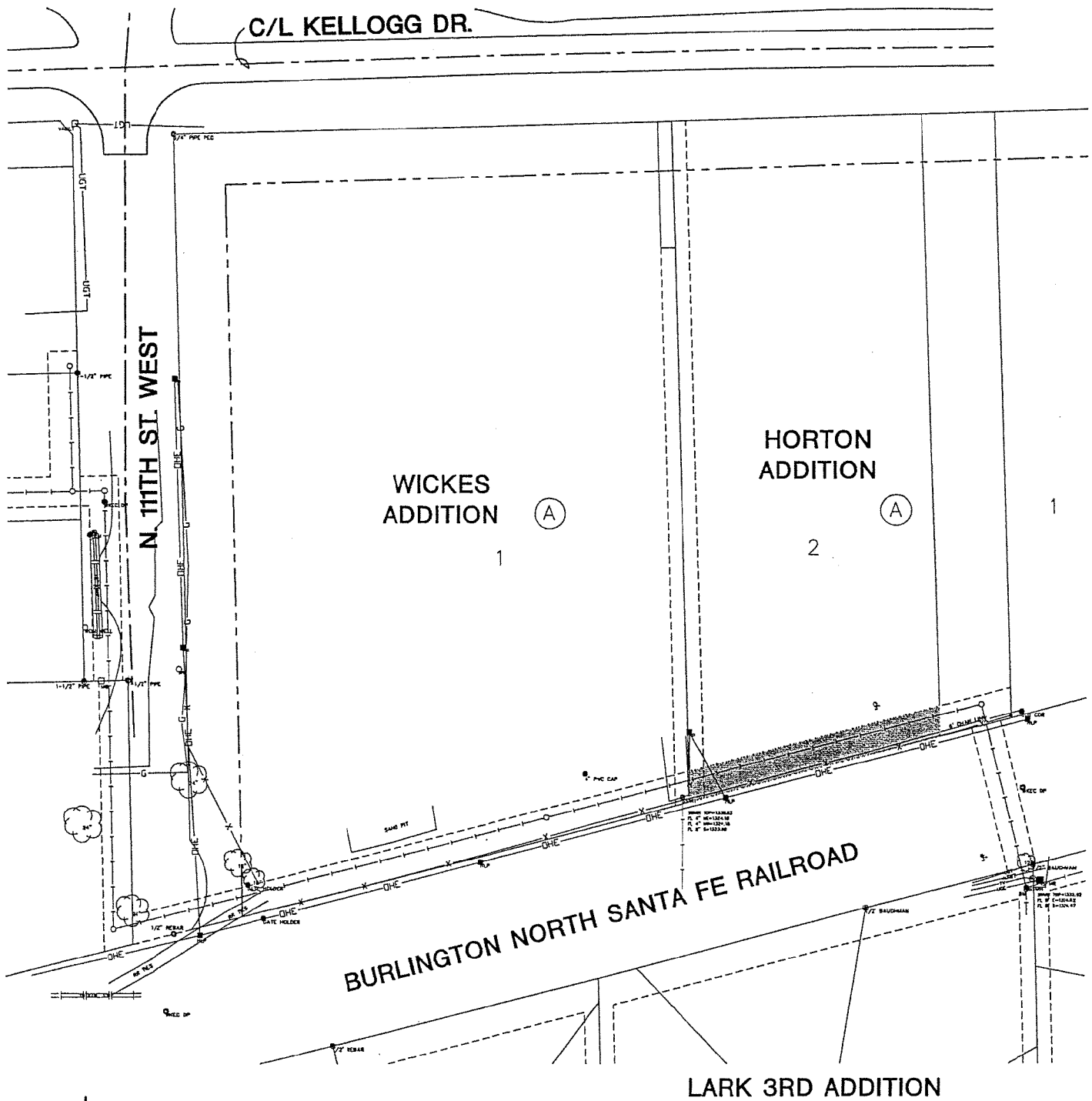
MKEC
ENGINEERING
CONSULTANTS, INC.

**PROPOSED EASEMENT
M & E PROPERTIES, LLC**
SHEET TITLE

MKEC
CHECKED BY:

1 / 1
SHEET / OF

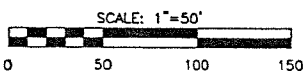
U:\CIVIL\07428 LAT 23\DWG\SAN\PROPOSED EASEMENTS DWG



BBJ, LLC

The south 20.00 feet of Lot 2, EXCEPT the east 50 feet of said Lot 2, Block A, Horton Addition, Wichita, Kansas, said 20.00 feet being measured perpendicular to the south line of said Lot 2.

Said parcel of land contains 3,531 square feet, more or less.



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411 N. WEBB ROAD
WICHITA, KS. 67206
316-684-9600

**C.O.W. LATERAL 23, MAIN 13, SWI
SANITARY SEWER PROJECT**

PROJECT NAME

PROPOSED EASEMENT

BBJ, LLC

SHEET TITLE

MKEC

DESIGN BY:

MKEC

DRAWN BY:

MKEC

CHECKED BY:

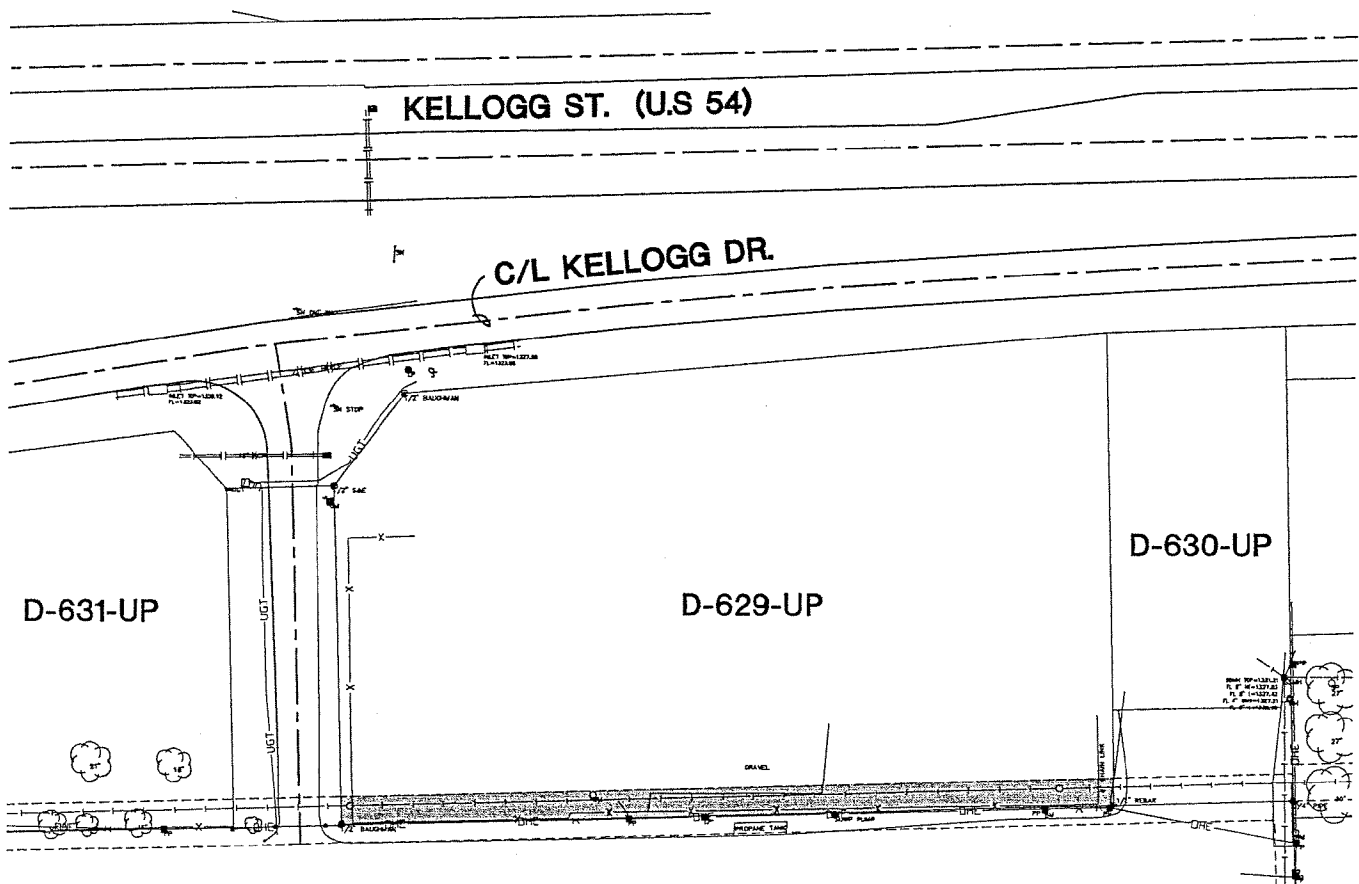
130

DECEMBER 2007

07428

1 / 1

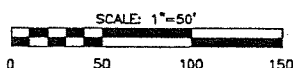
J:\CIVIL\07428 LAT 23\DWG\SAW\PROPOSED EASEMENTS.DWG



AUTOMASTERS, LLC

Commencing at the easternmost northeast corner of Lot 1, Block A, Blasi Park, Sedgwick County, Kansas; thence S88°27'03"W, 99.72 feet along the easternmost north line of said Lot 1 to the Point of Beginning; thence S88°27'03"W, 425.93 feet along said north line; thence N01°41'03"W, 15.00 feet along the westernmost east line of said Lot 1; thence N88°27'03"E, 425.93 feet; thence S01°24'43"E, 15.00 feet to the Point of Beginning.

Said parcel of land contains 6,390 square feet, more or less.



MKEC
ENGINEERING
CONSULTANTS, INC.

411 N. WEBB ROAD
WICHITA, K.S. 67206
316-684-9600

**C.O.W. LATERAL 23, MAIN 13, SWI
SANITARY SEWER PROJECT**

PROJECT NAME

**PROPOSED EASEMENT
AUTOMASTERS, LLC**

SHEET TITLE

MKEC

DESIGN BY:

DECEMBER 2007
DATE

MKEC

DRAWN BY:

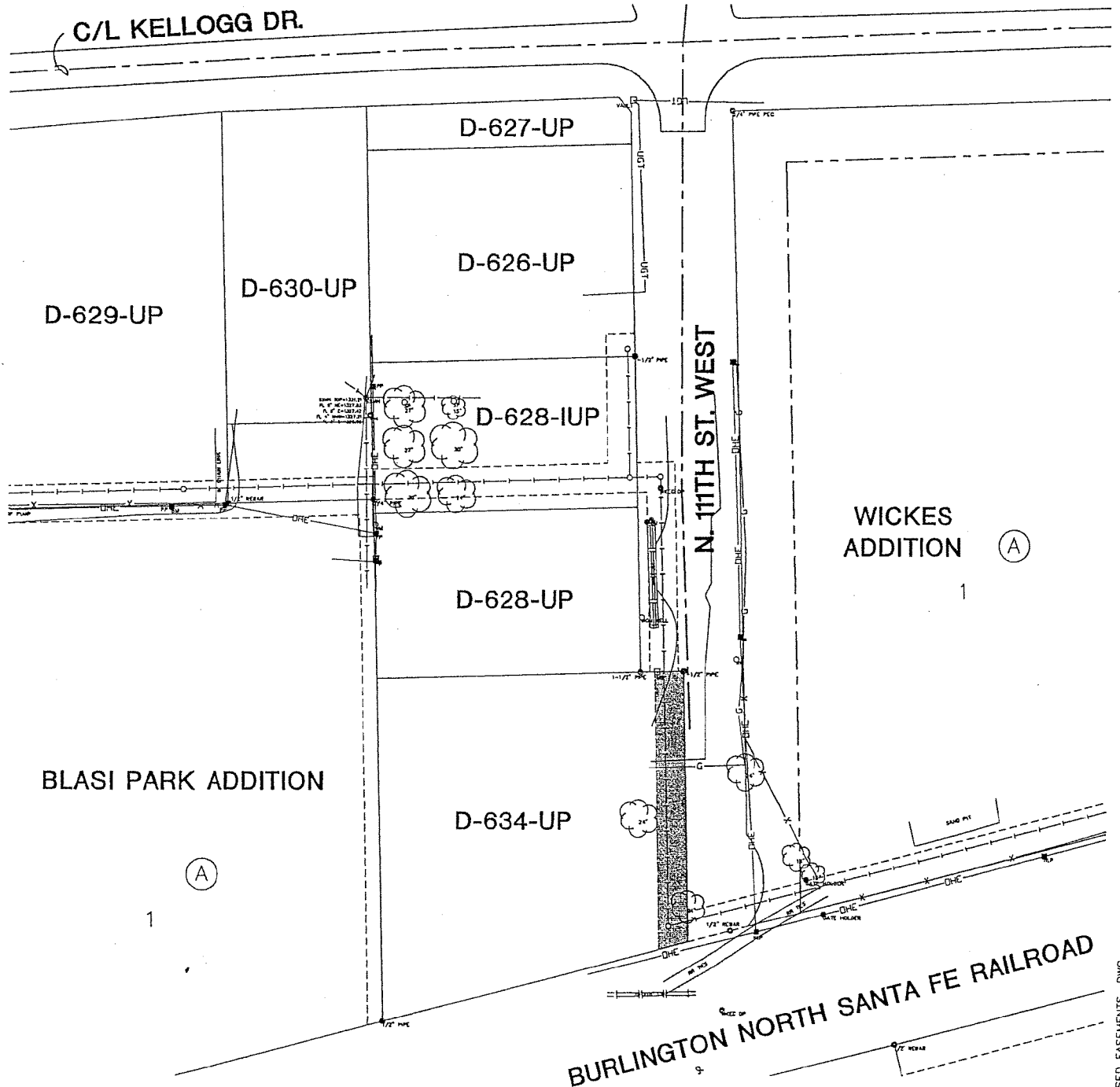
07428
JOB NO.

MKEC

CHECKED BY:

7 / 11
SHEET/OF

U:\CIVIL\07428 LAT 23\DWG\SAN\PROPOSED EASEMENTS.DWG



VERNON J. BLASI, ET AL

Commencing at the Northwest Quarter of Section 31, Township 27 South, Range 1 West of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas; thence S01°24'43"E, 511.84 feet along the east line of said Quarter to the Point of Beginning; thence S01°24'43"E, 178.72 feet along said east line to the north right of way of the Burlington Northern and Santa Fe Railroad; thence S75°47'12"W, 20.51 feet along said right of way; thence N01°24'43"W, 183.18 feet parallel with said east line; thence N88°20'47"E, 20.00 feet to the Point of Beginning.

Said parcel of land contains 3,618 square feet, more or less.

MKEC
ENGINEERING
CONSULTANTS, INC.

411 N. WEBB ROAD
WICHITA, K.S. 67206
388-684-9600

**C.O.W. LATERAL 23, MAIN 13, SWI
SANITARY SEWER PROJECT**

PROJECT NAME

**PROPOSED EASEMENT
VERNON J. BLASI, ET AL**

SHEET TITLE

MKEC

DESIGN BY:

MKEC

DRAWN BY:

MKEC

CHECKED BY:

DECEMBER 2007 07428

1 / 1

J:\CIVIL\07428 LAT 23\DWG\SAN\PROPOSED EASEMENTS.DWG

CITY OF WICHITA
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Acquisition of Easement by Eminent Domain for the Main 13, Southwest Sewer Interceptor, Lateral Line 23, Near West Kellogg and 111th Street (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt the resolution, approve and place on first reading the ordinance providing for acquisition by eminent domain of certain real property.

Background: On May 1, 2007, the City Council approved the construction and extension of a sanitary sewer lateral line to provide service to a developed area in west Wichita. This project requires the acquisition of 15 to 20 foot wide permanent easements from a total of ten parcels of land. Some of the properties impacted by the project are vacant while others consist of single-family or commercial users.

Analysis: City staff has been negotiating the purchase of the easements and unable to reach an agreement with six parcels. The six parcels still needed for the project are composed of five different ownerships. There are three vacant properties, two commercial properties, and one single-family residential property. All six parcels are zoned General Commercial or Limited Industrial.

The acquisition of an 5,400 square foot easement from the vacant, Resthaven excess parcel in the 11300 Block of West Kellogg was valued at \$3,240, or \$0.60 per square foot. The owner rejected the offer and has not been willing to negotiate. Staff will continue to contact and negotiate with the owner, but due to the lack of a counter offer, it is necessary to initiate eminent domain.

A 3,351 square foot easement is required from the vacant 1.75 acre parcel in the 11000 Block of West Kellogg. The owner rejected the appraised offer of \$5,480, or \$0.60 per square foot and additional monies for the relocation of a fence. A counter offer of \$7,500 was received. This value was derived by increasing the easement value to \$1.20 per square foot. This is amount is inconsistent with the market value and compensation for subsurface easements. Staff will continue to negotiate with the owner, but due to a time element involved, it is necessary to initiate eminent domain.

It is necessary to obtain a 1,025 square foot easement from the vacant parcel at 10195 West Kellogg. The owner rejected the appraised offer of \$1,560, or \$0.60 per square foot and additional monies for the relocation of a fence. The owner declared that the compensation is not adequate however has not yet provided a counter offer. Due to the time element involved, it is necessary to initiate eminent domain.

The 2.4 acre property at 11323 West Kellogg is improved with an auto sales lot and outdoor storage area.

It is necessary to obtain a 15-foot wide easement from the most southern 15 feet of the property. Said easement is 6,390 square feet. This easement area is primarily vacant land surrounded by a chain link fence. A portion of the land within the proposed easement area is used as a secure storage site. Improvements consist of additional fencing and crushed rock. The owner rejected the appraised offer of \$11,885, or \$0.60 per square foot and additional monies for replacement fencing. The counter offer provided at \$50,000 included compensation for a loss of business. This amount is deemed unreasonable and to date, the city has not been able to negotiate a settlement otherwise. Due to the time element involved, it is necessary to initiate eminent domain.

11409 West Kellogg is improved with a campground/recreation vehicle park. Access to the park is served by a 60-foot wide, 250-foot long driveway off the frontage road. The proposed 900 square foot easement is a 15-foot strip of land that crosses the driveway. The owner has neither accepted nor rejected the appraised value of \$540.

In addition, the same property owner also owns the residential property at 1659 South 111th. The offer of \$2,170, or \$0.60 per square foot, was neither accepted nor rejected. The City has been unable to get the owner to respond to any of the attempts to discuss the proposed acquisitions of both 11409 West Kellogg and 1659 South 111th. It is necessary to acquire the two easements and due to the time element involved, it is necessary to initiate eminent domain.

Financial Considerations: The cost of this acquisition will be paid for by the City at large.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure in the area.

Legal Considerations: The Law Department has approved the resolution and ordinance as to form.

Recommendation/Action: Adopt the resolution and approve and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District Court to accomplish such acquisition.

Attachments: Aerial maps, tract maps, resolution and ordinance.

PUBLISHED IN THE WICHITA EAGLE ON JANUARY 30, 2009

RESOLUTION NO. 09-026

RESOLUTION DECLARING THE NECESSITY FOR ACQUIRING PRIVATE PROPERTY FOR THE USE OF THE CITY OF WICHITA IN CONNECTION WITH PLANNED SANITARY SEWER IMPROVMENTS TO SERVE AN AREA WEST OF 111TH STREET WEST, ON THE NORTH AND SOUTH SIDES OF KELLOGG IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

WHEREAS, the governing body has previously authorized the study and the preliminary design of certain sanitary sewer improvements to serve an area west of 111th Street West, on the north and south sides of Kellogg

WHEREAS, such study and preliminary design has identified the need to acquire several parcels of private property in order to properly complete such improvements; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. The governing body hereby declares it to be necessary to acquire certain private property in connection with sanitary sewer improvements to serve an area west of 111th Street West, on the north and south sides of Kellogg.

SECTION 2. The City Engineer is directed to make or cause to be made a survey and description of the lands and/or interests to be acquired and to have such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 27th day of January, 2009.

CITY OF WICHITA, KS:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PUBLISHED IN THE WICHITA EAGLE ON ____

ORDINANCE NO.48-174

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE CONSTRUCTION AND IMPROVEMENT OF SANITARY SEWER TO SERVE AN AREA WEST OF 111TH STREET WEST, ON THE NORTH AND SOUTH SIDES OF KELLOGG IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of easement acquisition and land acquisition for the construction of sanitary sewer improvements to serve an area bounded by Hoover on the west, 13th Street North on the North, Smith on the east, and an approximate half mile north of 11th Street North on the south in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A perpetual easement for the construction and maintenance of sanitary sewer in and to the following described tracts, to wit:

The South 10 Feet of the Easternmost 539.96 Feet of Lot 1, Resthaven Gardens of Memory, an Addition to Wichita, Sedgwick County, Kansas.

The South 20 Feet of the East 50 Feet of Lot 2, Block A, Horton Addition to Wichita, Sedgwick County, Kansas, said 20 Feet being measured perpendicular to the South line of said Lot 2.

The South 20 Feet of Lot 2, EXCEPT the East 50 Feet of said Lot 2, Block A, Horton Addition to Wichita, Sedgwick County, Kansas, said 20 Feet being measured perpendicular to the South line of said Lot 2.

Commencing at the Easternmost Northeast corner of Lot 1, Block A, Blasi Park, Sedgwick County, Kansas; thence S88°27'03"W, 99.72 Feet along the Easternmost North line of said Lot 1 to the Point of Beginning; thence S88°27'03"W, 425.93 Feet along said North line; thence N01°41'03"W, 15 Feet along the Westernmost East line of said Lot 1; thence N88°27'03"E, 425.93 Feet; thence S01°24'43"E, 15 Feet to the Point of Beginning.

The South 15 Feet of the North 250 Feet of Lot 1, Block A, Blasi Park, Sedgwick County, Kansas, the South line of said North 250 Feet lying 300 Feet South of the South line of U.S. 54 as shown on the recorded plat of said addition.

Commencing at the Northwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M., Wichita, Sedgwick County, Kansas; thence S01°24'43"E, 511.84 Feet along the East line of said Quarter to the Point of Beginning; thence S01°24'43"E, 178.72 Feet along said East line to the North right-of-way of the Burlington Northern and Santa Fe Railroad; thence S75°47'12"W, 20.51 Feet along said right-of-way; thence N01°24'43"W, 183.18 Feet parallel with said East line; thence N88°20'47"E, 20 Feet to the Point of Beginning.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2009.

CITY OF WICHITA, KS:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

CITY OF WICHITA
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Lease of Antenna Site on McLean Manor (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the lease.

Background: McLean Manor, at 2627 West 9th Street is an eight-story apartment complex operated by the Wichita Housing Authority. On August 31, 1999, the City Council approved a lease with AT&T Wireless allowing the placement of a wireless antenna array on the roof of the building. On June 7, 2005 the City Council approved the assignment of this lease to ALLTEL. The original lease had a ten-year term and expires in November 2009 with no options to extend. ALLTEL has requested that a new lease be negotiated in advance of the termination.

Analysis: The original lease called for rent of \$10,000 per year for the first three years, increasing to \$12,000 for years four and five of the lease and \$13,000 for the remaining five years. The proposed lease has a five year term with four five-year options. The initial rent is \$18,000 per year, increasing by 15% at the beginning of each option period. The lessee is responsible for any personal or real property taxes associated with the array. The lessee agrees not to interfere with the City's or other tenants' use of the property. There are two other arrays on the roof. Both are larger than the subject. Rent on the other leases is \$23,636 and \$24,000 per year. Both expire in 2010.

Financial Considerations: The City will receive rent revenues as described above. The lessee shall be responsible for all costs of installation, operation and maintenance of the facility.

Goal Impact: Promote efficient infrastructure by improving cellular service in the area.

Legal Considerations: The Law Department has approved the amendment as to form.

Recommendation/Action: It is recommended that the City Council; Approve the lease and authorize all necessary signatures.

Attachments: Lease agreement.

LEASE AGREEMENT
(McLean Manor Rooftop)

THIS AGREEMENT is made and entered into this ____ day of _____, 2008,

BY AND BETWEEN

City of Wichita, Kansas,
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

"LESSOR,"

AND

ALLTEL Newco LLC,
A Delaware Limited Liability Company.
One Allied Drive, B2FO2-A
Little Rock, Arkansas 72202

"LESSEE."

WITNESSETH THAT:

WHEREAS, Lessor is the owner of certain property within the City of Wichita, owned and operated for public purposes; and

WHEREAS, Lessee wishes to lease a certain portion of Lessor's property for the purpose of constructing, operating and maintaining certain communications equipment (the Facility); and

WHEREAS, the above named parties desire to enter into this Lease Agreement on the terms set forth herein;

NOW, THEREFORE, for and in consideration of the premises and rent provided herein and the mutual covenants and agreements recited herein, the above named parties do hereby agree and shall be bound are as follows:

1. **PREMISES.** Lessor is the owner of the premises at 2627 West 9th Street in Wichita, Sedgwick County, Kansas commonly known as McLean Manor ("Property"). Lessor hereby leases to Lessee and grants the right to occupy and use certain space on the roof of the building located on the Property together with access to the roof and to the utilities for such Property as described and depicted in Exhibit A (collectively referred to as "Leased Premises"), subject to the terms and conditions of this Lease. .

2. **TERM.** (a) The term of the Lease shall be five (5) years, commencing upon the "Commencement Date," designated herein as November 9, 2009.

(b) This lease shall be reviewed for renewal of four (4) additional _ five (5) year terms (each five (5) year term shall be defined as an "Extension Term"), upon the same terms and conditions except as noted elsewhere in this agreement, unless Lessee notifies Lessor in writing, of Lessee's intentions not to renew this Lease at least sixty (60) days prior to the expiration of the existing Term.

(c). Upon written request of either the Lessor or Lessee, the Lease shall be reopened and renegotiated at any time prior to the expiration of the Term or any extension thereof upon any of the following events: Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either party; or change in the structure or operation of the telecommunications industry which materially affects any rights or obligations of either party. Failure of the parties to successfully renegotiate the materially affected provisions of the Lease shall give rise to the right of the requesting party to terminate the Lease under the provisions of Paragraph 11.

3. **RENT.** (a) As part consideration for this Lease Agreement and as rent for the use of the Leased Premises, the Lessee agrees to pay to Lessor as follows: the sum of Eighteen Thousand Dollars and No Cents (\$18,000.00) per year. Rent shall be payable without demand, deduction, discount, set-off and/or notice in advance and shall be due on the Commencement Date of the lease and each year thereafter during the term hereof. In the event that the lease is terminated under the provisions of Paragraph 9 which allow a proration of prepaid rent, such prepaid rent will be prorated on a daily calculation over the period for which Rent has been prepaid. During any renewal terms, rent shall increase at a rate of fifteen percent (15.0%) on the Commencement Date of each renewal term.

(b) As part consideration for this Lease Agreement and as Rent for the use of the Leased Premises, the Lessee agrees to pay to Lessor an administrative fee equal to one-twelfth (1/12) of the initial annual Rent shall be due and payable within (10) days following the date of this Lease Agreement. In the event that the Lessee is unable to obtain the Governmental Approvals as provided in Paragraph 1 or otherwise terminates this lease prior to the Commencement Date, the Lessor shall retain this fee to help reimburse the Lessor for its administrative, legal, and preparatory expenses. Otherwise, such fee shall be credited toward the first Rent payment.

(c) All payments shall be made by check or money order and shall be made payable to the order of the City of Wichita, Kansas. All payment installments shall be mailed or hand delivered to the Office of Property Management, 13th Floor, City Hall, 455 North Main Street,

Wichita, 67202 on or before each monthly due date, until and unless such address is changed as Lessor may specify from time to time by written notice delivered as stated hereinafter. All installments not received by the Lessor by the tenth (10th) day after the date on which they are due shall be considered delinquent and Lessee shall pay to Lessor a \$100.00 late charge. The provision for such late charge shall be in addition to all of the Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner.

4. **PERMITTED USE.** (a) The Leased Premises may be used or occupied by Lessee only for permitted uses as follows:

i. Transmission and reception of communications signals for the type of communication service. Lessee shall have the right to maintain active microwave dishes and necessary appurtenant equipment on or upon the penthouse structure of the City Hall building in the manner configured and set forth in Exhibit A, which is attached hereto and incorporated herein by reference. Support equipment necessary for the operation of the microwave dishes may be located in space on the 14th floor of the City Hall building, set forth in Exhibit B, which is attached hereto and incorporated herein by reference. The area on the 14th floor of the City Hall building, set forth in Exhibit B, shall not exceed 200 square feet in area.

ii. Construction, installation, operation, maintenance, repair, or replacement of communications fixtures and related equipment, cables, and accessories as described in Exhibit A or B, or hereafter submitted in writing and approved from time to time by the Lessor (Antenna Facilities). Any vertical chase for conduits shall not exceed one 4" nominal diameter and be properly secured. Any future approved concrete penetrations, larger than 1" diameter, shall be core drilled and sealed with an approved fire-stop compound. Any roof penetrations must be properly sealed. All penetrations that have been sealed will require the approval of the Lessor.

iii Installation and operation of transmission cables or utility lines and facilities across the Property between the Antenna Facilities and utility providers at such locations and in such manner as reasonably approved by the Lessor. Lessee shall be responsible for the expense of installation of all cables and utility lines.

(b) The Lessor shall not be responsible for the quality of power supplied to Lessee's equipment. The Lessee agrees to reimburse Lessor, on a monthly basis, not to exceed a 30 day period following presentation of the invoice to Lessee by the Lessor for the actual cost of electricity used by Lessee for its communication system. Lessor shall bear the cost for all power supplied to the Leased Premises and Antenna Facilities.

(c) The Antenna Facilities shall remain the exclusive property of the Lessee. Any existing equipment (i.e. antenna, mounting bracket, cabling, network equipment, etc.), not indicated in Exhibit A as active and currently installed on or upon the penthouse structure shall be removed from the Lessor premises by Lessee, in accordance with Section 15. Upon termination of this agreement, the Lessee will be required to remove all Antenna Facilities.

(d) The Lessor grants to Lessee the right of and ingress, egress, and access to the Property adequate to service the Leased Premises and the Antenna Facilities all times during the term of this Lease, subject to the specific conditions of this Lease. The Lessee agrees to adhere to the Lessor's Security Division policies in all times of ingress, egress and access to the property and provisions listed in Paragraph 5(i). Unless it is of an emergency need, Lessee shall contact the Lessor (section 22) a minimum of 24 hours ("Reasonable Notice") prior to their intent to access their Leased Premises and/or Antenna Facilities. The Lessor shall have the right, upon notice, to change the means and location of Lessee's access, provided that such shall not materially interfere with Lessee's operation.

(e) Lessee shall have the right, prior to the Commencement Date and upon Reasonable Notice to the Lessor, to enter the Property to obtain a title report, perform surveys, and other engineering procedures or environmental investigations on, under, and over the Property, necessary to determine that Lessee's use of the Leased Premises will be compatible with the Lessor's structural, engineering, and technical specifications and Lessee's engineering specification, system, design, operations, and Governmental Approvals.

(f) The parties recognize that the Lessee's use of the Property is not exclusive and the Lessor may grant leases to other communications providers for use of the Property. The Lessee agrees to cooperate with the Lessor and other communications providers in its design and operation to enable the collocation of communications providers and use of the Property by others and for other purposes, consistent with the reasonable operational needs of the Lessee, subject to the provisions of Paragraph 5 (g). It is understood and agreed that the Lessor has priority use of the entire roof area and penthouse structure of the City Hall building.

(g) In the event the Lessee's use of its equipment interferes with the County's Emergency Communication system and /or Lessor's communication needs, the Lessor reserves the right to notify Lessee to immediately halt any communication transmissions causing such problems. The Lessee may resume its transmissions at such time as the problem(s) have been resolved. Otherwise, Lessee shall have the exclusive use of that portion of the Leased Premises physically occupied by Lessee's Antenna Facilities. Lessee may be required to share use of those remaining portions of the Leased Premises, including the stacking of equipment and laying-over of cables, with the Lessor or other communications providers, subject to the provisions of

Paragraph 5(g). Lessor will not grant after this date the right to any other party to use the Leased Premises if such use may in any material way adversely affect or interfere with Lessee's Antenna Facilities.

(h) Lessor shall give notice to the Lessee of its intent to enter into any additional leased agreements after this dated for communications equipment on the Property and give the Lessee the opportunity to evaluate the potential for interference, comment on the proposed arrangements, and seek to coordinate with such other communications providers.

(i) The Lessee shall not have the right to connect to or use any utilities of the Lessor.

5. **CONDITIONS OF USE.** All use of the Property and Leased Premises shall be only for permitted uses and shall be subject to the following conditions:

(a) Lessee shall obtain at Lessee's expense all licenses and permits or authorizations required for Lessee's use of the Leased Premises from all applicable governmental and regulatory entities, including without limitation the City of Wichita, State of Kansas, Federal Communications Commission, Federal Aviation Administration, OSHA, and all other agencies thereof ("Governmental Approvals"). Lessor agrees to reasonably cooperate with Lessee in obtaining such Governmental Approvals.

(b) The Antenna Facilities shall only be designed, constructed, and maintained in accordance with plans approved by the Lessor set out in Paragraph 6 and with regulatory requirements. Where there are facilities of other communications providers already located or approved for the Property at the date of this Lease, Lessee shall be required to coordinate the design and plan approval with such other providers in such manner as the Lessor may reasonably require.

(c) The design of the Facility shall comply with the conditions of City of Wichita Wireless Master Plan and Unified Zoning Code and any other necessary approvals thereafter during this Lease, except to the extent that such requirements are modified by action of the governing body of the City applicable to all City-owned facilities:

- i. The antennas and equipment are painted to match the color of the structure or the background against which they are most commonly seen, and affixed so as to minimize visual intrusion.
- ii. The height of the facility may not extend more than 20 feet above the average height of the roofline.

- iii. Equipment on rooftops shall be set back or screened in accordance with zoning requirements.
- iv. The new or additional antennas or equipment does not require rezoning, CUP amendment or a conditional use.

(d) The Antenna Facilities shall be designed and installed consistent with the load bearing capacity of the roof and structure of the building as reasonably determined by the Lessor. The Lessor may require the Lessee to provide, at Lessee's expense, such verification of the structural capacity by a licensed architect or engineer. Lessee shall further provide such assurance as reasonably required by the Lessor that the mounting does not invalidate existing roof warranties and will not cause leaks or deterioration.

(e) The Lessee shall provide such assurance as reasonably required by the Lessor that the use of the Antenna Facilities will not cause undue exposure or harm to tenants or other workers from radio frequency radiation or high voltage electricity.

(f) The Antenna Facilities shall be designed, installed, constructed, and maintained in accordance with the laws and regulations of all governmental entities having jurisdiction. The Lessee's operation shall be in such a manner that there is no interference with the operation of the Lessor's property, surrounding property, or any communications facilities of the Lessor.

(g) The design, construction, and operation of the Antenna Facilities will be done in such a manner as will allow the use of the Property by other communications providers. Lessee agrees that it will not cause interference with other communication providers existing on the Property as of the date of the Lease and will not hereafter change its operations in such a manner so as to cause interference with other communication providers whether now existing or hereafter established on the Property, provided that such other communications providers operate within their permitted frequencies, in accordance with all applicable laws and regulations, and in accordance with plans approved by the City of Wichita. Whenever the Lessee and another communications provider on the Property are required to collocate or share space for communication equipment, when the plans submitted for the Lessee or any other communications provider indicate that there is the potential for interference, or when there is any claim that there is interference between providers, the Lessee or other provider may request that the Lessor determine whether such interference or conflict may or does exist. In the event of such request, the Lessor shall refer such claims or dispute to a qualified engineer or consultant to determine the matter on behalf of the Lessor. The recommendation of such determination shall be forwarded to those involved and shall be the basis on which the claim or dispute is determined as to the Lease subject to the final approval of the Lessor.

(h) The Lessee shall not use the Leased Premises in any way that interferes with the residential or governmental use of the Property by the Lessor or tenants or licensees of the Lessor. The design and Plans for the Antenna Facilities shall take such matters into consideration.

(i) Lessee shall have access to the Property, provided that Lessee understands that the Property is used for residential purposes and that Lessee shall take such reasonable steps as are necessary (including the design of the Antenna Facilities) to assure that access and use shall minimize disturbance to the Lessor's tenants. Access for construction and maintenance shall be limited to reasonable business hours (8 a.m. to 6 p.m. on business days), except in case of emergency where access is reasonably required to maintain service or protect the property of Lessee, in which case the activity of the Lessee on the Property shall be conducted in such a manner as to minimize disturbance to the tenants. Lessee shall be responsible for responding to any complaints of disturbance from Lessor's tenants about Lessee's operations and access.

(j) Lessee, at Lessee's expense, shall keep and maintain the Facility and Leased Premises in commercially reasonable condition and repair during the term of this agreement. Upon termination of this agreement, the Leased Premises shall be returned to the Lessor in good, useable condition as further provided in this agreement.

(k) Lessee shall not use, or permit said Leased Premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which said Leased Premises are hereby leased.

(l) Lessee will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, or unreasonably interfere with, annoy or disturb other occupants, guests, neighbors, or Lessor in the management of the building.

(m) Except to the extent required by law, no sign, notice, awning, advertisement, picture or other inscription of any kind shall be placed or put upon any portion of the Leased Premises, unless the written consent of Lessor shall first have been obtained which consent may be denied without cause.

(n) Lessee shall not commit, or suffer to be committed, any waste upon the Leased Premises and Lessee further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of Lessor.

(o) Lessee expressly recognizes that the Property is publicly owned and that the Lessor desires that the Leased Premises be used in such a manner that gives the appearance of impartiality in political campaigns and on public issues; as such the Lessee will not use the

Leased Premises for any partisan or political activity or for an overt public activities that take a position on policy issues before the City and its agencies, provided that this provision shall not prevent the Lessee from taking positions in newsletters, correspondence, internal meetings, etc. that otherwise are in accordance with the purposes of the organization and provided further that this Lease does not control or regulate the content of any radio communications.

(p) Lessee shall neither use nor occupy the Leased Premises for any unlawful, disreputable or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, Lessee agrees to immediately take action and cease any activity or use in violation of this agreement.

(q) No existing building or any building that is constructed or placed upon the Property, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi- game, casino-style gambling on the premises.

(r) Lessee represents that it has inspected the Property and finds that such are suitable for its needs and requirements and accepts the Leased Premises "as is" without any additional preparation required of the Lessor.

6. **PLAN APPROVALS.** The Lessor's prior consent and approval is required for all plans and specifications for use for the Antenna Facilities and related structures or utility connections. The Lessor may require additional details or modifications of such plans as may be necessary in the reasonable determination of the Lessor to assure the safety of the Antenna Facilities, integrity of the roof and structure, the aesthetic compatibility of the Antenna Facilities to the property and the neighborhood, to coordinate with other communications providers, and to meet the requirements and conditions of Paragraphs 4 and 5. Such approval shall not be unreasonably withheld or delayed by the Lessor and shall be deemed given for those plans attached hereto as Exhibit C. Lessee shall provide the Lessor as-built drawings of the Antenna Facilities. The plans in Exhibit C and the as-built drawings may be shared with such other communications providers on the Property as is necessary for an appropriate design with the intent to maximize the usage of the Property and to prevent interference between users. The Lessee may designate any portion of the plans and drawings that it reasonably believes are competitively sensitive and require confidentially. The determination of use of such designated material will be made in the same manner as the conflict procedures of Paragraph 5 (g).

The approvals of this Paragraph shall be deemed approval by the Lessor in its capacity as a property owner and landlord but shall not be deemed the approval as required for the Zoning Code, Building Code, or any other approved required by the City of Wichita in a regulatory or governmental capacity. Lessee shall be responsible for obtaining all permits and approvals required for the construction, maintenance, and operations of the Antenna Facilities.

7. **SECURITY FOR DAMAGE TO PROPERTY AND DEFAULT.** In order to ensure faithful performance of this Lease Agreement and to protect the Lessor and Lessor's Property from any damage by the Antenna Facilities, Lessee shall maintain and file with the Lessor a letter of credit or performance bond with the Lessor in amount equal to Five (5) year's Rent, which may be offset by the prepayment of Rent. Such letter of credit or performance bond shall be in such form as reasonably required by the Lessor and provided no later than the Commencement Date. Upon event of any default, Lessor may, from time to time, without prejudice to any other remedy, use such letter of credit or bond to the extent necessary to recover for damages done by the Antenna Facilities, for costs of removal of the Antenna Facilities, or for sums owed by Lessee, if not otherwise paid when due. Within a reasonable time after the termination date of this Lease Agreement, if Lessee is not then in default hereunder, any remaining balance of such Letter of Credit or bond after deduction of sums owed by Lessee shall be returned by Lessor to Lessee.

8. **DEFAULT.** The following shall be deemed a "Default" under this Lease:

(a) If Lessee fails to pay amounts due under this Lease or maintain a letter of credit or bond required under this Lease within Fifteen (15) days of written notice to that such is overdue.

(b) If Lessee or Lessor fails to observe or perform its obligations under this Lease and does not cure such failure within thirty (30) days from written notice of breach, or such longer period as may be required to diligently complete a cure commenced within the thirty (30) day period.

9. **TERMINATION.** This Lease Agreement shall terminate upon occurrence of any of the following:

(a) The expiration of the lease term or any extension thereof.

(b) Any default as defined in paragraph 8 if notice of termination is given by the nondefaulting party.

(c) Lessee's inability to obtain Governmental Approvals as set out in paragraph 2.

(d) Upon ninety (90) days' written notice by the Lessee that Lessee is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit, or Governmental Approval necessary to the construction and operation of the Antenna Facilities or Lessee's business, provided that Lessee is responsible to continue the rent during such ninety (90) day period.

(e) Upon ninety (90) days' written notice by Lessee that the Leased Premises are or will become unacceptable under the Lessee's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong, provided that Lessee is responsible to continue the Rent during such ninety (90) day period.

(f) Immediately upon written notice if the Leased Premises or Antenna Facilities are destroyed or damaged so as in the Lessee's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and the Lessee shall be entitled to a prorated reimbursement of any Rent prepaid, less any deduction for restoration as provided in the Lease. If the Lessee elects to continue this Lease, then all Rent shall abate until the Leased Premises and Antenna Facilities are restored to a condition allowing Lessee's continued use of the Antenna Facilities for their intended purpose.

(g) Upon thirty (30) days notice to Lessor that the Lessor or another communications provider on the Property is adversely interfering with the radio frequency of communications capability of the antenna Facilities, provided that the parties shall use their best effort to resolve or mediate such interference during the notice period or any extension thereof mutually agreed to by the parties.

(h) Immediately upon written notice if the Property is destroyed or damaged so as in the Lessor's reasonable judgment that the continued presence of the Antenna Facilities is impractical or detrimental to the structural integrity or use of the Property. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and the Lessee shall be entitled to a prorated reimbursement of any Rent prepaid.

(i) Lessee shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of the Lessee's property, or Lessee makes an assignment for the benefit of creditors.

(j) Upon one hundred and eight (180) days after declaration by the Lessor that the use of the Property has changed to a use incompatible with the Antenna Facilities or that the Leased Premises is needed for public purpose. The Lessee may by written notice terminate the Lease at any sooner time after such event. The Lessee shall be entitled to a prorated reimbursement of any Rent prepaid.

(k) Upon any such termination as provided in this Paragraph, the Lessor shall be entitled to possession of the Leased Premises, and Lessor may recover for rent due and damages and recover possession of said Leased Premises as provided by law, and any prepaid rent will be

refunded on a prorata basis.

10. **TAXES.** Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Lessor shall pay when due all real property taxes and other fees and assessments attributable to the Leased Premises. Lessee shall pay, as additional rent, any property taxes or increase in property taxes levied against the Property or Leased Premises which is directly attributable to Lessee's use of the Property. Should Lessee's use of the Property be determined to fall outside the scope of those uses set forth in K.S.A. 79-254, and amendments thereto, and such use by Lessee thereby causes a loss of the tax exempt status currently existing for the leased Property, Lessee shall be solely responsible for any taxes and other fees and assessments assessed on the leased Property that result from the Lessee's use thereof. Lessee shall pay all such taxes and assessments when due and not allow any to become delinquent. Lessor gives the Lessee the right to appeal any tax assessment or tax increase in Lessor's name at Lessee's own expense.

11. **INSURANCE.** Lessee agrees to carry public liability and commercial general liability insurance on the Leased Premises and covering Lessee's activities on the Property during the term hereof, with companies licensed to do business in the State of Kansas for limits of not less than an aggregate amount of \$1,000,000 and \$500,000 per occurrence for injury or death of any one person or property damage. The Lessor shall be named as an additional insured on the policy. Such insurance coverage shall recognize this Lease and provide that Lessor and Lessee shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination, or change in such insurance. Lessee shall also maintain worker's compensation insurance as required by law. Lessee shall, upon request by Lessor, provide Lessor with copies of all policies or certificates evidencing that such insurance is in full force and effect and stating the terms thereof. Lessor may satisfy the insurance requirements by obtaining appropriate endorsement to any master policy of liability insurance that Lessee may maintain, subject to the reasonable approval of the Lessor.

12. **INDEMNIFICATION.** (a) Lessee agrees to indemnify and hold harmless the Lessor and the Lessor's officers, employees, and agents, from any and all liability, loss, suits, claims, judgments, fines, or demands arising by reasons of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising directly or indirectly out of Lessee's use of or activities on the Property, except to the extent such are caused by the Lessor or the Lessor's officers or employees.

(b) Lessor shall not be liable to Lessee for any damage done to or loss of personal property or for damage or loss suffered by the business or occupation of Lessee arising from any act or neglect of any tenants or other occupants of the building, other communications providers,

or of the employees or agents of Lessee.

(c) Lessor shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war court order, requisition or order of governmental body or authority or other matter beyond the reasonable control of Lessor, or for any damage or inconvenience which may arise through repair or alteration of any part of the building, or failure to make repairs, or from any cause whatever except to extent caused by the negligence of the Lessor's officers or employees.

13. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the Leased Premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Lease if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

14. **ENVIRONMENTAL.** Lessee agrees that it will conduct its activities on the Property in compliance with all applicable environmental laws. Each party agrees to defend, indemnify, and hold the other harmless from and against any and all claims, causes of action, demands, and liability, including, but not limited to damages, costs, expenses, assessments, penalties, fines, losses, judgments, and attorney fees that the other party may suffer due to the possible existence or the discovery of any hazardous substance on the Property or the migration of any hazardous substance to other property or released into the environment to the extent such arises out of such party's past, present, or future activities on or use of the Property. This Paragraph shall survive the termination of this Lease.

The Lessee shall inform, and has a continuing duty to inform, the Lessor, of the nature of toxic and hazardous substances used or stored on the Leased Premises, including also the type and nature of batteries and fuel supply used and stored.

15. **IMPROVEMENTS AND RESTORATION.** (a) Lessee shall make no material changes or alteration in the Leased Premises unless it shall first have obtained Lessor's written consent thereto. Lessee shall not remove any portion of the Antenna Facilities which are so permanently attached to the Property as to leave the Property damaged or materially altered, except with the prior consent of the Lessor according to plans approved by the Lessor.

(b) In addition to other provisions of this Lease, the Lessor at all times shall have the right in its sole discretion to reconfigure and modify the Property, provided that such relocation shall be done without cost to the Lessee and without material interruption to Lessee's operation. Lessor shall give at least 90 days written notice to Lessee of any such relocation of the Antenna

Facilities.

(c) Lessee shall within thirty (30) days after the Termination of the Lease, remove Lessee' personal property without damaging or destroying any property of the Lessor. Any property of the Lessee not removed within such time shall become the property of the Lessor to dispose in any way, which meets the needs and requirements of the Lessor. Lessee shall be liable and shall reimburse the Lessor for any expense or cost in removal or disposals of Lessee's personal property either abandoned or not removed in the thirty (30) day period.

(d) Upon Termination, the Lessee shall surrender the Leased Premises in a clean and orderly manner and shall, as reasonably requested by the Lessor, restore the Leased Premises to a condition at least equivalent to that under which existed at the time of this Lease, reasonable wear and tear excepted. All removal of equipment shall require a final inspection and approval of the Lessor.

16. **LIENS.** (a) Lessee shall not, during the term of this agreement, permit or suffer any lien or encumbrance to attach to the Leased Premises or any part thereof and shall indemnify and save harmless the Lessor against the same.

(b) Lessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property, and Lessor gives the Lessee the right to remove all or any portion of the same from time to time in Lessee's sole discretion, except to the extent access or plan approval is otherwise required by this Lease.

17. **INSPECTION AND ENTRY.** It shall be lawful for Lessor, its agents and representatives at all times to enter into or upon the Leased Premises for the purpose of examining into the condition thereof, or to make such repairs and alteration as may be necessary for the safety and preservation of the Property, but without any obligation to make repairs. Lessor shall not open any enclosed cabinet or vault or move Antenna Facilities without prior notice to, and the presence of, the Lessee.

18. **OWNERSHIP REPRESENTATION.** Under no circumstances shall the Lessee represent to any party that the Lessee is the owner of the real property covered by the lease or the agent or trustee of the Lessor. Lessee understands and agrees that no authorization to act for, on or in behalf of the Lessor is granted to the Lessee.

19. **NONDISCRIMINATION.** Lessee will not, on the grounds of race, color, sex, religion, national origin, ancestry, handicap, marital status, age, being a special disabled veteran

or Vietnam Era veteran, discriminate or permit discrimination against any person in the use of the Leased Premises or in its activities under this Lease.

20. **NO THIRD PARTY BENEFICIARY.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Lease to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Lease to maintain a suit for damages pursuant to the terms or provisions of this Lease.

21. **ASSIGNMENT AND SUBLEASE.** This agreement is non assignable. Access to the subject property of this lease is made available only due to the fact that Lessee is a Municipality recognized under Kansas law.

(a) Provided Lessor's rights and interest are not adversely affected in the reasonable determination of the Lessor, Lessee may assign all or any part of this Lease to (i) any person or business entity which is a parent, subsidiary, or affiliate of Lessee; (ii) any person or business entity controlling, controlled by, or under common control with the Lessee, (iii) any person or business entity that is merged or consolidated with Lessee or purchases a majority or controlling interest in the ownership or assets of Lessee; or (iv) any person or business entity that, after first receiving FCC or state regulatory agency approvals, acquires Lessee's radio communications business, provided that any such assignee by such action assumes all obligations of the Lessee under this Lease. Upon notice to Lessor of such assignment, Lessee shall be relieved of all liabilities and obligations hereunder and Lessor shall look solely to the assignee for performance under this Lease and all obligations hereunder. Lessee may sublet this Lease, upon notice and additional compensation to the Lessor, only if such sublease is subject to the provision of this Lease. All other assignments of this Lease must be approved, in writing, by Lessor, which approval may be withheld without cause.

(b) In the event the Lessee rents or subleases the premises in whole *or in part* with the Lessor's consent as herein provided, and if any rents received by the Lessee under any such sublease are in excess of the rent payable by the Lessee under this lease, or any additional consideration is paid to Lessee by the assignee under any such assignment, then Lessor hereby declares one half of such excess rents under any sublease or such additional consideration for an assignment to be due and payable by Lessee to Lessor as Additional Rent hereunder. Lessee agrees to provide such reasonable documentation as may be required by Lessor for the accounting of such Additional Rent.

(c) Lessor shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease, and in the Property; and, to the extent that such assignee assumes Lessor's obligations hereunder, Lessor shall by virtue of such assignment be released for such obligations.

22. **NOTICE.** All writings, notices, and demands shall be deemed sufficient if sent by

facsimile, mail, or hand delivered to:

LESSOR:

Office of Property Management
Attention: John C. Philbrick
City Hall - 13th Floor
455 North Main Street
Wichita, Kansas 67202

LESSEE:

ALLTEL Newco LLC
Attn: Network Property Management
One Allied Drive, B2F02-A
Little Rock, Arkansas 72202

23. **SEPARABILITY.** If any clause or provision of this Lease Agreement is determined to be illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

24. **OTHER PROVISIONS.**

(a) Each party will, at any time upon fifteen (15) days prior written notice from the other, execute acknowledge, and deliver to the other a recordable memorandum of lease or affidavit of equitable interest. Either party may records this Lease, the memorandum, or affidavit at any time, in its sole discretion.

(b) Upon Lessee's request, Lessor shall provide evidence of the Lessor's ownership interest in the Property and such other information as may be reasonably requested to assure the validity and enforceability of this Lease Agreement.

(c) The Lease Agreement shall be construed in accordance with the laws of the State of Kansas.

25. **AMENDMENTS; BINDING EFFECT.** This Lease may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be

binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in duplicate the day and year first above written.

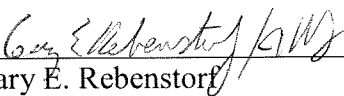
LESSOR
CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

ATTEST:

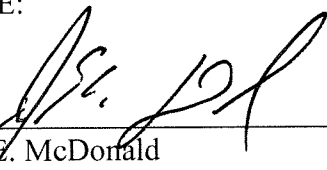
Karen Sublett, City Clerk

Approved as to form:



Gary E. Rebenstorff
Director of Law

LESSEE:

By 
James E. McDonald
Vice President – Network Services

ATTEST:

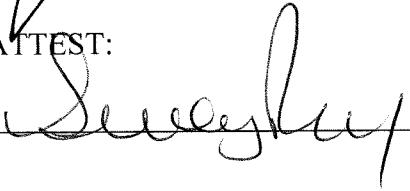
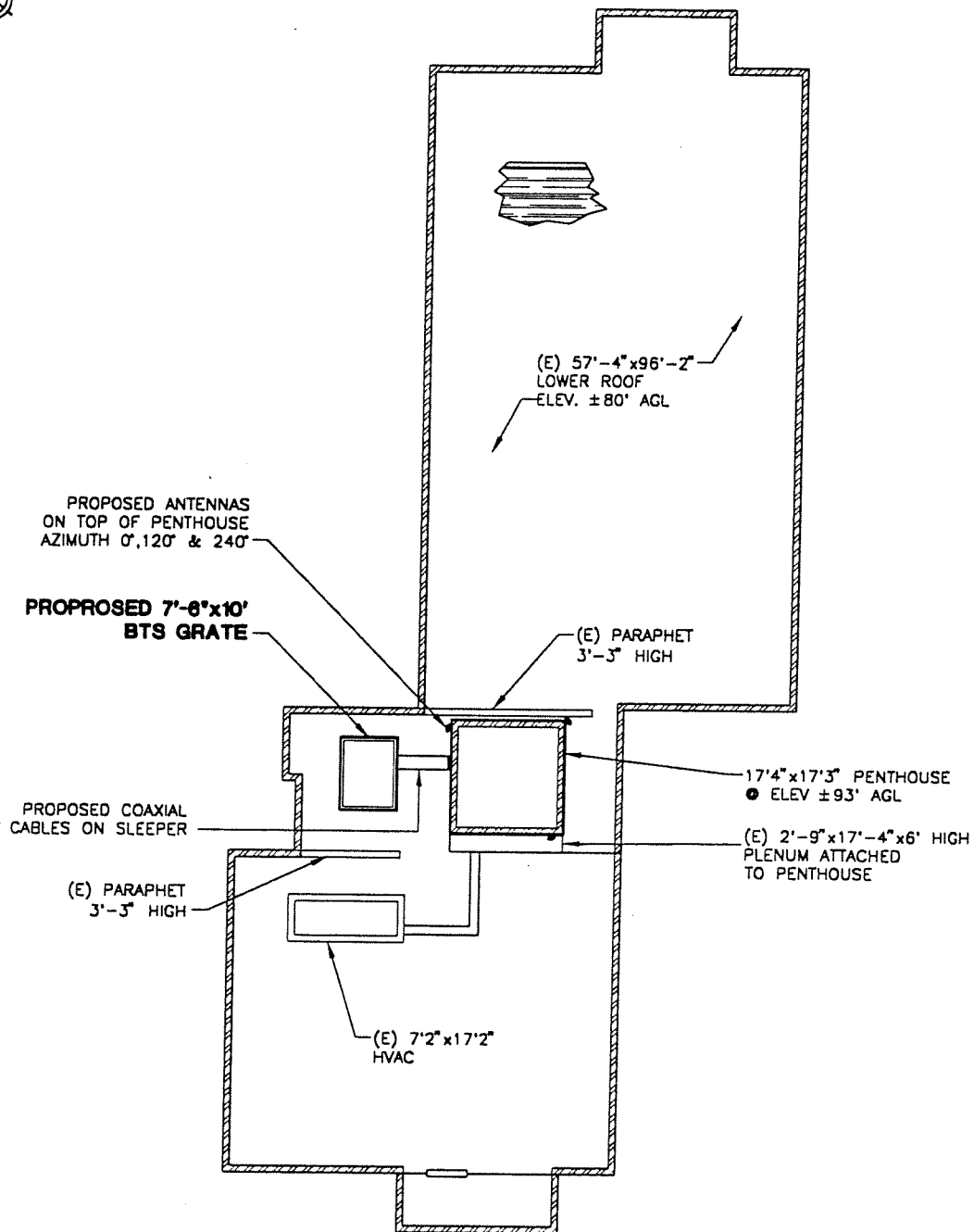
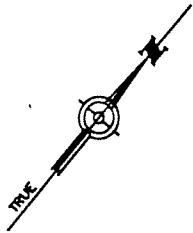


EXHIBIT "A"

SCALE: NONE



**GEM ENGINEERING
COMPANY**

10970 STANCLIFF
HOUSTON, TX 77099

phone: (281)561-9225
fax: (281)561-9399

SITE NAME: CENTRAL AVE./
Mc CLAIN MANOR

SITE NO.: WI 09A-01

DRAWN BY: VD

DATE: 07-28-99

DIVINE TOWER INTERNATIONAL CORPORATION

2310 Refugee Road, Columbus, Ohio 43207
614-883-0556 Fax 614-883-0791

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council

SUBJECT: Purchase Option (Conopco, Inc.) (District IV)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: On June 17, 1997, City Council approved issuance of Industrial Revenue Bonds in the amount of \$700,000 to Case Swayne Co., Inc. In conjunction with the bond issue, City Council approved a 100% property tax abatement for an eight-year term on bond-financed property. Bond proceeds were used to finance the purchase of existing machinery and equipment from PFS, a division of PepsiCo, Inc., at 5015 S. Water Circle in south Wichita. Through a subsequent corporate merger, Conopco, Inc. (“Conopco”) became the successor to Case Swayne and assumed the lease agreement. The City has been requested to convey title to the IRB-financed property to Conopco.

Analysis: Unilever, a wholly owned subsidiary of Conopco, operates the Wichita plant as a spice blending firm, engaged in the manufacture of specialty pre-mixed dry and wet spices, as well as specialized packaging for nationally branded retail and food service marketers.

Under the terms of the Lease, the City is required to convey its interest in the property securing the IRB issue, once Conopco has paid the purchase price and addressed other considerations under the provisions of the Lease Agreement, including the payment of all outstanding bonds. Final payment of the bonds was made June 30, 2006.

Financial Considerations: The City has received payment of the \$1,000 purchase option price. There are no other fiscal impacts to the City as a result of the purchase option.

Goal Impact: Economic Vitality and Quality of Life. Cooperating with the Tenant and Trustee on IRB issues is a necessary part of preserving the credibility and integrity of the City’s IRB program for future projects.

Legal Considerations: The City is contractually bound to convey the IRB Project property to the Tenant once all the conditions established in the Lease have been met. The City Attorney’s Office has approved as to form the Resolution authorizing execution of the Bill of Sale and Termination of Lease Agreement and the delivery of such documents.

Recommendation/Actions: It is recommended that the City Council adopt the Resolution approving the Bill of Sale and Termination of Lease Agreement to convey the property to Conopco, Inc. and authorize necessary signatures.

Attachments: Resolution, Bill of Sale, Termination of Lease

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY OF WICHITA, KANSAS, TO CONVEY CERTAIN PROPERTY TO CONOPCO, INC. AND PRESCRIBING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the City has previously issued its Industrial Revenue Bonds, Series IV, 1997 (the "Bonds"), in the aggregate original principal amount of \$669,074, in connection with the purchasing and acquiring of certain machinery and equipment for a spice manufacturing and distribution facility located in the City of Wichita, Kansas, such machinery and equipment being hereinafter referred to as the "Project"); and

WHEREAS, the Bonds were issued pursuant to Ordinance No. 43-505 passed and approved by the governing body of the City on June 17, 1997 (the "Ordinance"); and

WHEREAS, in connection with the issuance of the Bonds, the City, as lessor (the "Issuer"), and Case Swayne Co., Inc. as lessee (the original "Tenant"), entered into a Lease Agreement dated as of June 1, 1997 (the "Lease"), a notice of which was filed of record at Film 1706, Page 2290 in the records of the Sedgwick County Register of Deeds;

WHEREAS, Issuer's interest in the Lease was assigned to Intrust Bank N.A., Wichita, Kansas pursuant to Assignment of Lease dated June 30, 1997, which was filed of record at Film 1714, Page 1782 in the records of Sedgwick County Register of Deeds, and pursuant to the terms of the Assignment, the Assignment shall be null and void upon full payment of the Bonds;

WHEREAS, further in connection with the issuance of the Bonds, the City and Case Swayne Co., Inc. entered into an Easement and Agreement dated as of June 1, 1997 (the "Easement"), which was filed of record at Film 1706, Page 2296 in the records of Sedgwick County Register of Deeds, which Easement has terminated in accordance with its terms;

WHEREAS, Conopco, Inc., a New York corporation (successor by merger to International Food Solutions, Inc., a Delaware corporation, successor by merger to Case Swayne Co., Inc., a Nevada corporation), is the successor to Case Swayne Co., Inc. under the Lease and the Easement, and is the current "Tenant" under the Lease;

WHEREAS, the Tenant has paid in full, on June 30, 2006 all of the outstanding Bonds pursuant to terms of the Ordinance, and in accordance with the terms of the Lease, the Basic Term of the Lease expired upon such payment; and

WHEREAS, concurrently upon the payment in full of all of the Bonds, the Lease is declared null and void and the Tenant requests that the City convey title to the Project to Conopco, Inc., following payment of the sum of \$1,000 required by Section 15.2(ii) of the Lease;

WHEREAS, the City desires to convey said Project to the Tenant upon satisfaction of the conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Approval of Conveyance. The conveyance by the City of the real and personal property described in Schedule I attached hereto and incorporated herein by reference (with such technical changes in such description as may be necessary to correct or update it) and confirmation of termination of the Easement in the real property further described in Schedule I is hereby approved, upon the terms and conditions set forth herein.

Section 2. Authorization of Documents. The City hereby authorizes and approves the Termination of Lease Agreement, attached hereto as Exhibit A, and the Bill of Sale, attached hereto as Exhibit B, in substantially the forms presented to and reviewed by the governing body of the City at this meeting and attached to this Resolution (copies of which documents shall be filed in the records of the City), with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof.

Section 3. Execution of Documents. The Mayor is hereby authorized and directed to execute the Termination of Lease Agreement and the Bill of Sale, and the City Clerk or Deputy City Clerk is hereby authorized and directed to attest to such documents, for and on behalf of the City; provided, however, that delivery of such documents is subject to the terms and conditions contained in Section 4 below.

Section 4. Delivery of Documents. The Mayor, City Clerk, or other appropriate staff of the City are hereby authorized and directed to deliver the Termination of Lease Agreement and the Bill of Sale, conditioned upon the Tenant having made payment of \$1000, as required by Section 15.2(ii) of the Lease.

Section 5. Further Authority. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates as may be necessary to transfer the Project, terminate all interest of the City in the Project and carry out the intent of this Resolution.

ADOPTED by the governing body of the City of Wichita, Kansas, 27th day of January, 2009.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

CONOPCO, INC.

Approved as to Form:

Gary E. Rebenstorf, Director of Law

CONOPCO, INC.

SCHEDULE I

PROPERTY SUBJECT TO LEASE

THE LAND

An easement, effective until June 1, 2006, over and appurtenant to the real estate described as That part of Lot 1, P.C. Industrial Addition, Wichita, Sedgwick County, Kansas, lying south of the south line of the 60 foot Railroad Spur Track easement, as platted in said addition.

THE MACHINERY AND EQUIPMENT

All machinery and equipment acquired with the proceeds of the City's Series IV 1997 Industrial Revenue Bonds, including but not limited to the following:

Item Number	Qty	Description
W90496011719	1	U62068102 PJ Batt
W90496011724	1	U62068101 PJ Batt
W90496011727	1	U 62068201 PJ Chgr
5W00294J0168	1	Scrubber 700001999
5P30394J0172	1	Stretchwrapper 307560
5W90494T6877	1	Battry Station
5W00890JT198	1	Trailer 159501
5W00590TJ041	1	Cram-A-Lot Baler
1W01286U8516	1	Pallet Racking
5W90886JT037	1	Battery Charger
5W90185JT031		Hyster Lift
5W00582JT025	1	Storage Rack
5P3069407142	1	Automatic Bag Placer
5P30394J9170	2	Metal Detection Tube
5P3049406878	1	5M lbs. scale
5P30394J0165	2	200 pound scales
5P31293JA161	1	Drum Sifter, L-3039
5P31293JB161	1	Drum Sifter, L-3040
5P31293JC161	1	Drum Sifter, L-3041
5P31203JD161	1	Drum Sifter, L-3042
5P31193J0164	1	3M-Matic Case Sealer
5P30893J0160	1	AKS-15 Imprinter
5P30893J0159	1	Automate Bulk Bag Li
5P31292J0156	3	BS55A Pallet Jacks
5P30992J0154	1	Spice Metal Detector
5P30992J0155	1	Check Weight System
5P31291J0150	1	Dbl Closer Conveyor
5P30391J0148	1	Ribbon Blender, 0344
5P31191J0152	1	Case Sealer, 1055
5P60591J0149	1	14X16 Bench w/ remote
5P30890J0106	1	Spectrophotometer
5P30390J0121	1	Packaging Machine
5P30889J0107	1	Metal Detector
5P30189J0111	1	Chloridometer
5P30888J0112	1	High Press Washer

5P30885JB136	1	Air Cylinder
5P30486JA141	1	Hayssen Ultima Model
5P30486JC141	1	Hayssen 95-16 Instal
5P30486JE141	1	Hayssen Parts
5P30486J0140	1	Dust Collection System
5P30486J0142	1	Neutron Self Feed Au
5P31185J0138	1	NCI 3250-5 Scale
5P31185J0139	1	Stnless Bucket
5P30985J0130	1	Series 7 Digital Ben
5P30985J0135	1	DAC Uniflo Slider Be
5P30985J0145	1	DAC Uniflo Slider Be
5P30885JA136	1	Day Mixing Blender
5P30885J0131	1	Sullair Model 108 Air
5P30486JB141	1	Hayssen Ultima Model
5P30185J0132	1	Electronic Scale
5P30183J0114	1	#1 Sli-Coder
5P30782J0119	1	Electronic Scales
5P30782J0144	1	Electronic Scales
5P30486JD141	1	Misc Hayssen Parts
5P30382JA120	1	Auger & Funnels
5P30282J0129	1	Hayssen Form Fill Ma
5P30182JB120	1	Auger & Funnels
5P30680J0118	1	A50 Dryer
5P30578J0115	1	Bench Scale
5P31274J0017	1	Fairbanks Morse Scale
2R10786T1059	1	EVAP 512583
2R10786T1061	1	EVAP 512565
2R10185T0088	1	85 Utility 63301
2R10185T0881	1	Reefer 451159
2R10185T0883	1	Reefer 451285
2R10185T0884	1	Reefer 451171
2R10185T0889	1	85 Utility 63302
2R10185T0890	1	85 Utility 63303
2R10185T0891	1	85 Utility 63304
PR1396014079	1	Oven Vacuum
F91296013766	1	78BVZG1-IBM PC 350
F91296013767	1	23R0286-IBM Monitor
5F30394J0174	6	LazBoy Side Chair
5F30194JD249	10	Conference Chairs
5F31293JA249	3	Executive Desk
5F31293JB249	3	Credenza
5F31293JC249	1	Lateral File
5F91288J0011	1	Personal Computer
5F90188J0010	1	J&G Personal Computer
5F10774J0002	1	IBM Select Type
5F10274J0001	1	IBM Select Type
F91095010280	1	04150M00 3151 Term'
F91095010281	1	04162M00 3151 Term'
5P3069407355	1	Plotter 9249150135
5P10294J0250	1	3151 Terml, 88-P8287
5P90294J0248	1	Genicon 444OP, 94992
5F91193J0242	1	3151 Terml, 4D9QTY

5F91193J0243	1	3151 Terml, 4D9QTW
5F91193J0244	1	3151 Terml, 4D9QTV
5F91193J0245	1	3151 Terml, 4D9QTX
5F90993J0247	1	Smart UPS 900
5F90893J0232	1	RISC/6000, 0054761
5F90893J0233	1	Tape Drive, 0030771
5F90893J0234	1	3151 Terml, 3ZNPZK
5F90893J0235	1	3151 Terml, 3ZNPZD
5F90893J0236	1	3151 Terml, 3ZNPZB
5F90893J0237	1	3151 Terml, 3ZNPZF
5F90893J0238	1	3151 Terml, 3ZNPZG
5F90893J0239	1	3151 Terml, 3ZNPZJ
5F90893J0240	1	3151 Terml, 3ZNPZH
5F90893J0241	1	3151 Terml, 3ZNPZC
5F90992J0230	1	Mulimux Modem 204442
5F90992J0231	1	Mulimux Modem 206596
5F90991J0225	1	IBM 55-061 78DNFXB
5F90991J0226	1	IBM 4019 Ptr 11H1305
5F90991J0227	1	IBM 4019 Ptr 11G8863
5F90991J0228	1	IBM 8513 Mtr 23DVKB7
5F90991J0229	1	IBM 8513 Mtr 23DVMC6
5F90991J0230	1	IBM 55-061 78DNAVM
5F90186J0005	1	Kessler Computer Expo
F31095010274	8	Workstations
F31095010275	9	Executive Chairs
F31095010277	6	Lateral File Cabinets
F31095010279	8	Light Shelves
F71095010278	49	Breakroom Furniture
5F1049509486	1	Phone System
5F3049509501	1	Asko Dishwasher
5F3049509502	1	GE Ceran Range
5F3049509504	3	Executive Desk
5F3019509505	2	Credenza
5F3049509506	1	File Cabinets
5F7049509496	1	Time Clock
5F7049509497	1	Ice Machine
W91196013164	1	AB07N03879T Forklift
W91196013165	1	EXBS 15 Battery Station
W10696012254	1	AB07N03718T Yale Lift
W90496U11718	1	6A137444 Crown PJ
W90496U11699	1	AUB008293 F/L Bat
W90496U11700	1	AUB008294 F/L Bat
W90496U11701	1	AUB008295 F/L Bat
W90496U11711	1	UA20815 F/L Charger
W90496U11712	1	AUB008196 F/L Bat
W90496U11713	1	UA20815 F/L Charger
W91095010282	3	Pallet Trucks
5W90185TR031	1	Hyster Lifts
P31395011066	1	Conveyors
P31095010276	3	2 PH Meter & Refractor
5P30495U9479	1	Automatic Bag Turner
5P30495U9480	1	Bag Closer

5P30495U9481	5	Bulk Bag Unloaders
5P30495U9482	3	Bag Liner Inflators
5P30495U9483	3	Filling Loader Stand
5P30495U9484	1	30" Drum Sifter
5P30495U9485	10	Level Indicators
5P30495U9487	2	Checkweighers
5P30495U9488	1	Heavy Duty Ribbon Bl
5P30495U9489	1	Conveter w/Bag Turner
5P30495U9490	1	Electronic Packer
5P30495U9491	1	Auto Matic Bag Place
5P30495U9492	6	Blending Carts
5P30495U9493	1	Blending Carts
5P30495U9494	1	Unloaders and Filler
5P30495U9495	1	Electronic Hoist &
5P30495U9498	1	Case Sealer Folder
5P30495U9503	1	Kason Drum Sifter
5P11278TR070	1	P-4 Datsun Forklift
1C20494U6830	1	Yale F/L 554609
1C2049406830		Yale F/L 554609
1C2049406831	1	F/L Bat 378221 Lease
1C2049406832	1	F/L Bat 378224 Lease
1C2049406833	1	F/L Bat 378223 Lease
1C2139305766	1	Crown P/J GA 118536
1C2139305767	1	Exide Bat HR28178101
1C2139305768	1	Exide Bat HR28178102
1C2139305769	1	Exide Bat HR28178201
1C2139305770	1	Exide Bat HR28178301
1C21393U5791	1	Nissan 921980
1C2139305791	1	Nissan 921980
L10496011836	1	Versatile Door
F31095010284	3	Vertical Blinds
L11095010283	1	Security System
L11095010285	1	Signs
L51095010286	1	Lightslens
5L1049509478	1	Arch Fees and Pannin
5L1049509498	1	Sprinkler System
5L1049509500	38	Lockers
5L1049509507	1	Conveyor
F91196013069	1	Computer Monitor
5F9049509508	1	Cableing

EXHIBIT B

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, City of Wichita, Kansas, a municipal corporation (the "Grantor"), does grant, sell, transfer and deliver unto Conopco, Inc., a New York corporation (the "Grantee"), all of its interest in the following goods and chattels, viz:

All machinery and equipment acquired with the proceeds of the City's Series IV 1997 Industrial Revenue Bonds, including but not limited to the following:

Item Number	Qty	Description
W90496011719	1	U62068102 PJ Batt
W90496011724	1	U62068101 PJ Batt
W90496011727	1	U 62068201 PJ Chgr
5W00294J0168	1	Scrubber 700001999
5P30394J0172	1	Stretchwrapper 307560
5W90494T6877	1	Battry Station
5W00890JT198	1	Trailer 159501
5W00590TJ041	1	Cram-A-Lot Baler
1W01286U8516	1	Pallet Racking
5W90886JT037	1	Battery Charger
5W90185JT031		Hyster Lift
5W00582JT025	1	Storage Rack
5P3069407142	1	Automatic Bag Placer
5P30394J9170	2	Metal Detection Tube
5P3049406878	1	5M lbs. scale
5P30394J0165	2	200 pound scales
5P31293JA161	1	Drum Sifter, L-3039
5P31293JB161	1	Drum Sifter, L-3040
5P31293JC161	1	Drum Sifter, L-3041
5P31203JD161	1	Drum Sifter, L-3042
5P31193J0164	1	3M-Matic Case Sealer
5P30893J0160	1	AKS-15 Imprinter
5P30893J0159	1	Automate Bulk Bag Li
5P31292J0156	3	BS55A Pallet Jacks
5P30992J0154	1	Spice Metal Detector
5P30992J0155	1	Check Weight System
5P31291J0150	1	Dbl Closer Conveyor
5P30391J0148	1	Ribbon Blender, 0344
5P31191J0152	1	Case Sealer, 1055
5P60591J0149	1	14X16 Bench w/ remote
5P30890J0106	1	Spectrophotometer
5P30390J0121	1	Packaging Machine

5P30889J0107	1	Metal Detector
5P30189J0111	1	Chloridometer
5P30888J0112	1	High Press Washer
5P30885JB136	1	Air Cylinder
5P30486JA141	1	Hayssen Ultima Model
5P30486JC141	1	Hayssen 95-16 Instal
5P30486JE141	1	Hayssen Parts
5P30486J0140	1	Dust Collection System
5P30486J0142	1	Neutron Self Feed Au
5P31185J0138	1	NCI 3250-5 Scale
5P31185J0139	1	Stnless Bucket
5P30985J0130	1	Series 7 Digital Ben
5P30985J0135	1	DAC Uniflo Slider Be
5P30985J0145	1	DAC Uniflo Slider Be
5P30885JA136	1	Day Mixing Blender
5P30885J0131	1	Sullair Model 108 Air
5P30486JB141	1	Hayssen Ultima Model
5P30185J0132	1	Electronic Scale
5P30183J0114	1	#1 Sli-Coder
5P30782J0119	1	Electronic Scales
5P30782J0144	1	Electronic Scales
5P30486JD141	1	Misc Hayssen Parts
5P30382JA120	1	Auger & Funnels
5P30282J0129	1	Hayssen Form Fill Ma
5P30182JB120	1	Auger & Funnels
5P30680J0118	1	A50 Dryer
5P30578J0115	1	Bench Scale
5P31274J0017	1	Fairbanks Morse Scale
2R10786T1059	1	EVAP 512583
2R10786T1061	1	EVAP 512565
2R10185T0088	1	85 Utility 63301
2R10185T0881	1	Reefer 451159
2R10185T0883	1	Reefer 451285
2R10185T0884	1	Reefer 451171
2R10185T0889	1	85 Utility 63302
2R10185T0890	1	85 Utility 63303
2R10185T0891	1	85 Utility 63304
PR1396014079	1	Oven Vacuum
F91296013766	1	78BVZG1-IBM PC 350
F91296013767	1	23R0286-IBM Monitor
5F30394J0174	6	LazBoy Side Chair
5F30194JD249	10	Conference Chairs
5F31293JA249	3	Executive Desk
5F31293JB249	3	Credenza
5F31293JC249	1	Lateral File
5F91288J0011	1	Personal Computer

5F90188J0010	1	J&G Personal Computer
5F10774J0002	1	IBM Select Type
5F10274J0001	1	IBM Select Type
F91095010280	1	04150M00 3151 Term'
F91095010281	1	04162M00 3151 Term'
5P3069407355	1	Plotter 9249150135
5P10294J0250	1	3151 Terml, 88-P8287
5P90294J0248	1	Genicon 444OP, 94992
5F91193J0242	1	3151 Terml, 4D9QTY
5F91193J0243	1	3151 Terml, 4D9QTW
5F91193J0244	1	3151 Terml, 4D9QTV
5F91193J0245	1	3151 Terml, 4D9QTX
5F90993J0247	1	Smart UPS 900
5F90893J0232	1	RISC/6000, 0054761
5F90893J0233	1	Tape Drive, 0030771
5F90893J0234	1	3151 Terml, 3ZNPZK
5F90893J0235	1	3151 Terml, 3ZNPZD
5F90893J0236	1	3151 Terml, 3ZNPZB
5F90893J0237	1	3151 Terml, 3ZNPZF
5F90893J0238	1	3151 Terml, 3ZNPZG
5F90893J0239	1	3151 Terml, 3ZNPZJ
5F90893J0240	1	3151 Terml, 3ZNPZH
5F90893J0241	1	3151 Terml, 3ZNPZC
5F90992J0230	1	Mulimux Modem 204442
5F90992J0231	1	Mulimux Modem 206596
5F90991J0225	1	IBM 55-061 78DNFXB
5F90991J0226	1	IBM 4019 Ptr 11H1305
5F90991J0227	1	IBM 4019 Ptr 11G8863
5F90991J0228	1	IBM 8513 Mtr 23DVKB7
5F90991J0229	1	IBM 8513 Mtr 23DVMC6
5F90991J0230	1	IBM 55-061 78DNAVM
5F90186J0005	1	Kessler Computer Expo
F31095010274	8	Workstations
F31095010275	9	Executive Chairs
F31095010277	6	Lateral File Cabinets
F31095010279	8	Light Shelves
F71095010278	49	Breakroom Furniture
5F1049509486	1	Phone System
5F3049509501	1	Asko Dishwasher
5F3049509502	1	GE Ceran Range
5F3049509504	3	Executive Desk
5F3019509505	2	Credenza
5F3049509506	1	File Cabinets
5F7049509496	1	Time Clock
5F7049509497	1	Ice Machine
W91196013164	1	AB07N03879T Forklift

W91196013165	1	EXBS 15 Battery Station
W10696012254	1	AB07N03718T Yale Lift
W90496U11718	1	6A137444 Crown PJ
W90496U11699	1	AUB008293 F/L Bat
W90496U11700	1	AUB008294 F/L Bat
W90496U11701	1	AUB008295 F/L Bat
W90496U11711	1	UA20815 F/L Charger
W90496U11712	1	AUB008196 F/L Bat
W90496U11713	1	UA20815 F/L Charger
W91095010282	3	Pallet Trucks
5W90185TR031	1	Hyster Lifts
P31395011066	1	Conveyors
P31095010276	3	2 PH Meter & Refractor
5P30495U9479	1	Automatic Bag Turner
5P30495U9480	1	Bag Closer
5P30495U9481	5	Bulk Bag Unloaders
5P30495U9482	3	Bag Liner Inflators
5P30495U9483	3	Filling Loader Stand
5P30495U9484	1	30" Drum Sifter
5P30495U9485	10	Level Indicators
5P30495U9487	2	Checkweighers
5P30495U9488	1	Heavy Duty Ribbon Bl
5P30495U9489	1	Conveter w/Bag Turner
5P30495U9490	1	Electronic Packer
5P30495U9491	1	Auto Matic Bag Place
5P30495U9492	6	Blending Carts
5P30495U9493	1	Blending Carts
5P30495U9494	1	Unloaders and Filler
5P30495U9495	1	Electronic Hoist &
5P30495U9498	1	Case Sealer Folder
5P30495U9503	1	Kason Drum Sifter
5P11278TR070	1	P-4 Datsun Forklift
1C20494U6830	1	Yale F/L 554609
1C2049406830		Yale F/L 554609
1C2049406831	1	F/L Bat 378221 Lease
1C2049406832	1	F/L Bat 378224 Lease
1C2049406833	1	F/L Bat 378223 Lease
1C2139305766	1	Crown P/J GA 118536
1C2139305767	1	Exide Bat HR28178101
1C2139305768	1	Exide Bat HR28178102
1C2139305769	1	Exide Bat HR28178201
1C2139305770	1	Exide Bat HR28178301
1C21393U5791	1	Nissan 921980
1C2139305791	1	Nissan 921980
L10496011836	1	Versatile Door
F31095010284	3	Vertical Blinds

L11095010283	1	Security System
L11095010285	1	Signs
L51095010286	1	Lightslens
5L1049509478	1	Arch Fees and Pannin
5L1049509498	1	Sprinkler System
5L1049509500	38	Lockers
5L1049509507	1	Conveyor
F91196013069	1	Computer Monitor
5F9049509508	1	Cableing

To have and to hold, all and singular, the said goods and chattels forever. And the said Grantor hereby covenants with the said Grantee that the interest of Grantor conveyed hereby is free from all encumbrances except (i) those liens and encumbrances to which title to the described property was subject when conveyed to the Grantor, (ii) those liens and encumbrances created by the Grantee or to the creation or suffering of which the Grantee has consented; and (iii) those liens and encumbrances resulting from the failure of the Grantee to perform and observe any of the agreements on its part contained in the Equipment Lease under which it has heretofore leased such property; and that it will warrant and defend the same against the lawful claims and demands of all persons claiming through the Grantor.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, we have hereunto set our hand and affixed the official seal of the City of Wichita, Kansas, for delivery as of the ____ day of January, 2009.

CITY OF WICHITA, KANSAS

[seal]

By _____
Carl A. Brewer, Mayor

ATTEST:

By _____
Karen Sublett, City Clerk

ACKNOWLEDGMENTS

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this ____ day of January, 2009, before me, a notary public in and for said County and State, came Carl A. Brewer, Mayor of the City of Wichita, Kansas, a municipal corporation of the State of Kansas (the "City"), and Karen Sublett, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Appointment Expires:

EXHIBIT A
TERMINATION OF LEASE AGREEMENT

This TERMINATION OF LEASE AGREEMENT (the "Agreement") is made by and between the City of Wichita, Kansas, a municipal corporation, of Sedgwick County, Kansas (the "City"), and Conopco, Inc., a corporation organized under the laws of the State of New York and qualified to conduct its business in the State of Kansas (the "Tenant"). Unless a definition is otherwise provided in this Agreement, the capitalized terms used in this Agreement shall have the same meanings ascribed to them in the Lease as defined below.

WITNESSETH

WHEREAS, the City has previously issued its Industrial Revenue Bonds, Series IV, 1997 (the "Bonds"), in the aggregate original principal amount of \$669,074, in connection with the purchasing and acquiring of certain machinery and equipment for a spice manufacturing and distribution facility located in the City of Wichita, Kansas, such machinery and equipment being hereinafter referred to as the "Project"); and

WHEREAS, the Bonds were issued pursuant to Ordinance No. 43-505 passed and approved by the governing body of the City on June 17, 1997 (the "Ordinance"); and

WHEREAS, in connection with the issuance of the Bonds, the City, as lessor (the "Issuer"), and Case Swayne Co., Inc. as lessee (, entered into a Lease Agreement dated as of June 1, 1997 (the "Lease"), a notice of which was filed of record at Film 1706, Page 2290 in the records of the Sedgwick County Register of Deeds;

WHEREAS, Issuer's interest in the Lease was assigned to Intrust Bank N.A., Wichita, Kansas pursuant to Assignment of Lease dated June 30, 1997, which was filed of record at Film 1714, Page 1782 in the records of Sedgwick County Register of Deeds, and pursuant to the terms of the Assignment, the Assignment shall be null and void upon full payment of the Bonds;

WHEREAS, further in connection with the issuance of the Bonds, the City and Case Swayne Co., Inc. entered into an Easement and Agreement dated as of June 1, 1997 (the "Easement"), which was filed of record at Film 1706, Page 2296 in the records of Sedgwick County Register of Deeds, which Easement has terminated in accordance with its terms;

WHEREAS, Conopco, Inc., a New York corporation (successor by merger to International Food Solutions, Inc., a Delaware corporation, successor by merger to Case Swayne Co., Inc., a Nevada corporation), is the successor to Case Swayne Co., Inc. under the Lease and the Easement, and is the current "Tenant" under the Lease;

WHEREAS, the Tenant has paid in full, on June 30, 2006 all of the outstanding Bonds pursuant to terms of the Ordinance and in accordance with the terms of the Lease, the Basic Term of the Lease expired upon such payment; and

WHEREAS, the Tenant requests that the City convey title to the Project to Tenant following payment by Tenant of the sum of \$1000 required by Section 15.2(ii) of the Lease;

NOW, THEREFORE, THE CITY DOES HEREBY STATE AND DECLARE that as of the date of delivery hereof the Lease and the Notice thereof shall terminate and be of no further force and effect. The property located in Sedgwick County, Kansas, affected by the Lease, the Easement and this Agreement is described in Schedule I attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties named above have caused this Agreement to be duly executed in their respective names and have caused their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, as of _____.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

[SEAL]

ATTEST:

Karen Sublett, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

On this _____ day of January, 2009 before me, the undersigned, a Notary Public in and for said State, came Carl Brewer and Karen Sublett, to me personally known to be the Mayor and City Clerk, respectively, of the City of Wichita, Kansas, and said Mayor and City Clerk acknowledged that they executed the foregoing instrument in writing as the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

[SEAL]

My Appointment Expires:

CONOPCO, INC., a New York corporation

By _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss:
_____ COUNTY)

On this _____ day of _____, 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who, being by me duly sworn, did say that they are the representative of Conopco, Inc., and had signed the foregoing instrument in writing on behalf of said company as the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

[SEAL]

My Appointment Expires:

CONOPCO, INC.

SCHEDULE I

PROPERTY SUBJECT TO LEASE

THE LAND

An easement, effective until June 1, 2006, over and appurtenant to the real estate described as That part of Lot 1, P.C. Industrial Addition, Wichita, Sedgwick County, Kansas, lying south of the south line of the 60 foot Railroad Spur Track easement, as platted in said addition.

THE MACHINERY AND EQUIPMENT

All machinery and equipment acquired with the proceeds of the City's Series IV 1997 Industrial Revenue Bonds, including but not limited to the following:

Item Number	Qty	Description
W90496011719	1	U62068102 PJ Batt
W90496011724	1	U62068101 PJ Batt
W90496011727	1	U 62068201 PJ Chgr
5W00294J0168	1	Scrubber 700001999
5P30394J0172	1	Stretchwrapper 307560
5W90494T6877	1	Battery Station
5W00890JT198	1	Trailer 159501
5W00590TJ041	1	Cram-A-Lot Baler
1W01286U8516	1	Pallet Racking
5W90886JT037	1	Battery Charger
5W90185JT031		Hyster Lift
5W00582JT025	1	Storage Rack
5P3069407142	1	Automatic Bag Placer
5P30394J9170	2	Metal Detection Tube
5P3049406878	1	5M lbs. scale
5P30394J0165	2	200 pound scales
5P31293JA161	1	Drum Sifter, L-3039
5P31293JB161	1	Drum Sifter, L-3040
5P31293JC161	1	Drum Sifter, L-3041
5P31203JD161	1	Drum Sifter, L-3042
5P31193J0164	1	3M-Matic Case Sealer
5P30893J0160	1	AKS-15 Imprinter
5P30893J0159	1	Automate Bulk Bag Li
5P31292J0156	3	BS55A Pallet Jacks
5P30992J0154	1	Spice Metal Detector
5P30992J0155	1	Check Weight System
5P31291J0150	1	Dbl Closer Conveyor
5P30391J0148	1	Ribbon Blender, 0344
5P31191J0152	1	Case Sealer, 1055
5P60591J0149	1	14X16 Bench w/ remote
5P30890J0106	1	Spectrophotometer
5P30390J0121	1	Packaging Machine
5P30889J0107	1	Metal Detector
5P30189J0111	1	Chloridometer

5P30888J0112	1	High Press Washer
5P30885JB136	1	Air Cylinder
5P30486JA141	1	Hayssen Ultima Model
5P30486JC141	1	Hayssen 95-16 Instal
5P30486JE141	1	Hayssen Parts
5P30486J0140	1	Dust Collection System
5P30486J0142	1	Neutron Self Feed Au
5P31185J0138	1	NCI 3250-5 Scale
5P31185J0139	1	Stnless Bucket
5P30985J0130	1	Series 7 Digital Ben
5P30985J0135	1	DAC Uniflo Slider Be
5P30985J0145	1	DAC Uniflo Slider Be
5P30885JA136	1	Day Mixing Blender
5P30885J0131	1	Sullair Model 108 Air
5P30486JB141	1	Hayssen Ultima Model
5P30185J0132	1	Electronic Scale
5P30183J0114	1	#1 Sli-Coder
5P30782J0119	1	Electronic Scales
5P30782J0144	1	Electronic Scales
5P30486JD141	1	Misc Hayssen Parts
5P30382JA120	1	Auger & Funnels
5P30282J0129	1	Hayssen Form Fill Ma
5P30182JB120	1	Auger & Funnels
5P30680J0118	1	A50 Dryer
5P30578J0115	1	Bench Scale
5P31274J0017	1	Fairbanks Morse Scale
2R10786T1059	1	EVAP 512583
2R10786T1061	1	EVAP 512565
2R10185T0088	1	85 Utility 63301
2R10185T0881	1	Reefer 451159
2R10185T0883	1	Reefer 451285
2R10185T0884	1	Reefer 451171
2R10185T0889	1	85 Utility 63302
2R10185T0890	1	85 Utility 63303
2R10185T0891	1	85 Utility 63304
PR1396014079	1	Oven Vacuum
F91296013766	1	78BVZG1-IBM PC 350
F91296013767	1	23R0286-IBM Monitor
5F30394J0174	6	LazBoy Side Chair
5F30194JD249	10	Conference Chairs
5F31293JA249	3	Executive Desk
5F31293JB249	3	Credenza
5F31293JC249	1	Lateral File
5F91288J0011	1	Personal Computer
5F90188J0010	1	J&G Personal Computer
5F10774J0002	1	IBM Select Type
5F10274J0001	1	IBM Select Type
F91095010280	1	04150M00 3151 Term'
F91095010281	1	04162M00 3151 Term'

5P3069407355	1	Plotter 9249150135
5P10294J0250	1	3151 Terml, 88-P8287
5P90294J0248	1	Genicon 444OP, 94992
5F91193J0242	1	3151 Terml, 4D9QTY
5F91193J0243	1	3151 Terml, 4D9QTW
5F91193J0244	1	3151 Terml, 4D9QTV
5F91193J0245	1	3151 Terml, 4D9QTX
5F90993J0247	1	Smart UPS 900
5F90893J0232	1	RISC/6000, 0054761
5F90893J0233	1	Tape Drive, 0030771
5F90893J0234	1	3151 Terml, 3ZNPZK
5F90893J0235	1	3151 Terml, 3ZNPZD
5F90893J0236	1	3151 Terml, 3ZNPZB
5F90893J0237	1	3151 Terml, 3ZNPZF
5F90893J0238	1	3151 Terml, 3ZNPZG
5F90893J0239	1	3151 Terml, 3ZNPZJ
5F90893J0240	1	3151 Terml, 3ZNPZH
5F90893J0241	1	3151 Terml, 3ZNPZC
5F90992J0230	1	Mulimux Modem 204442
5F90992J0231	1	Mulimux Modem 206596
5F90991J0225	1	IBM 55-061 78DNFXB
5F90991J0226	1	IBM 4019 Ptr 11H1305
5F90991J0227	1	IBM 4019 Ptr 11G8863
5F90991J0228	1	IBM 8513 Mtr 23DVKB7
5F90991J0229	1	IBM 8513 Mtr 23DVMC6
5F90991J0230	1	IBM 55-061 78DNAVM
5F90186J0005	1	Kessler Computer Expo
F31095010274	8	Workstations
F31095010275	9	Executive Chairs
F31095010277	6	Lateral File Cabinets
F31095010279	8	Light Shelves
F71095010278	49	Breakroom Furniture
5F1049509486	1	Phone System
5F3049509501	1	Asko Dishwasher
5F3049509502	1	GE Ceran Range
5F3049509504	3	Executive Desk
5F3019509505	2	Credenza
5F3049509506	1	File Cabinets
5F7049509496	1	Time Clock
5F7049509497	1	Ice Machine
W91196013164	1	AB07N03879T Forklift
W91196013165	1	EXBS 15 Battery Station
W10696012254	1	AB07N03718T Yale Lift
W90496U11718	1	6A137444 Crown PJ
W90496U11699	1	AUB008293 F/L Bat
W90496U11700	1	AUB008294 F/L Bat
W90496U11701	1	AUB008295 F/L Bat
W90496U11711	1	UA20815 F/L Charger
W90496U11712	1	AUB008196 F/L Bat

W90496U11713	1	UA20815 F/L Charger
W91095010282	3	Pallet Trucks
5W90185TR031	1	Hyster Lifts
P31395011066	1	Conveyors
P31095010276	3	2 PH Meter & Refractor
5P30495U9479	1	Automatic Bag Turner
5P30495U9480	1	Bag Closer
5P30495U9481	5	Bulk Bag Unloaders
5P30495U9482	3	Bag Liner Inflators
5P30495U9483	3	Filling Loader Stand
5P30495U9484	1	30" Drum Sifter
5P30495U9485	10	Level Indicators
5P30495U9487	2	Checkweighers
5P30495U9488	1	Heavy Duty Ribbon Bl
5P30495U9489	1	Conveter w/Bag Turner
5P30495U9490	1	Electronic Packer
5P30495U9491	1	Auto Matic Bag Place
5P30495U9492	6	Blending Carts
5P30495U9493	1	Blending Carts
5P30495U9494	1	Unloaders and Filler
5P30495U9495	1	Electronic Hoist &
5P30495U9498	1	Case Sealer Folder
5P30495U9503	1	Kason Drum Sifter
5P11278TR070	1	P-4 Datsun Forklift
1C20494U6830	1	Yale F/L 554609
1C2049406830		Yale F/L 554609
1C2049406831	1	F/L Bat 378221 Lease
1C2049406832	1	F/L Bat 378224 Lease
1C2049406833	1	F/L Bat 378223 Lease
1C2139305766	1	Crown P/J GA 118536
1C2139305767	1	Exide Bat HR28178101
1C2139305768	1	Exide Bat HR28178102
1C2139305769	1	Exide Bat HR28178201
1C2139305770	1	Exide Bat HR28178301
1C21393U5791	1	Nissan 921980
1C2139305791	1	Nissan 921980
L10496011836	1	Versatile Door
F31095010284	3	Vertical Blinds
L11095010283	1	Security System
L11095010285	1	Signs
L51095010286	1	Lightslens
5L1049509478	1	Arch Fees and Pannin
5L1049509498	1	Sprinkler System
5L1049509500	38	Lockers
5L1049509507	1	Conveyor
F91196013069	1	Computer Monitor
5F9049509508	1	Cableing

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council Members

SUBJECT: 2006/ 2007 Traffic Signalization Program (District III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve signalization of the I-135 and South Hydraulic Intersection.

Background: On July 11, 2006, the City Council approved the 2006/2007 CIP Traffic Signalization Program. The following intersections have been signalized: 34th St. North and Woodlawn, Gatewood and 13th, I-235 and Meridian; and Hoover and MacArthur. It is proposed that the intersection of I-135 and South Hydraulic be signalized as part of the program.

Analysis: The proposed improvement will provide traffic signals at the south ramps of the interchange. The north ramps of the interchange are currently signalized. Sidewalk and wheelchair ramps will be reconstructed as necessary to conform to the Americans with Disabilities Act. Work is planned to begin this spring.

Financial Considerations: Remaining funds in the existing approved budget of \$1,050,000 should be sufficient for the I-135 and Hydraulic improvement.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve signalization of the I-135 and South Hydraulic Intersection.

Attachments: Map.



City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Westar poles for Waterman Improvement, between Main and Washington
(District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the payment.

Background: Westar Energy has installed 22 black poles and credenza fixtures on Waterman between Main & Topeka. The City agreed to compensate Westar for the difference between wood poles served overhead and the aesthetic black poles and fixtures. The annual streetlight rate will be based on wood poles served overhead.

Analysis: Funding in the amount of \$57,480 is due as a result these poles and fixtures being installed.

Financial Considerations: Funds are available in the project budget. The funding source is General Obligation Funds.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing improvements for the Intrust Arena.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve the payment to Westar Energy in the amount of \$57,480.

Attachments: None.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Agreement for Preliminary Concept Design: K-96 & Hoover Interchange
(District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Project and Design Agreement.

Background: Currently there are K-96 interchanges at Ridge and West Street but not at Hoover, leaving a two mile gap without access to adjacent areas. The Hoover corridor north and south of K-96 is rapidly becoming urbanized. Plans are currently being developed for the Kingsbury Park. On November 24, 2008, the Staff Screening and Selection Committee selected Professional Engineering Consultants (PEC) to provide design services for concept plans and right-of-way needs for the interchange.

Analysis: The project is part of an ongoing effort to provide freeway improvements in the Wichita urban area.

Financial Considerations: The PEC design fees total \$110,507. The proposed concept design budget is \$150,000 with the total paid by the Local Sales Tax.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing a safe and efficient transportation system. It addresses the Economic and Affordable Living goal by providing a public improvement which reduces the cost of transportation.

Legal Considerations: The authorizing Resolution and Agreement have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the preliminary design project, approve the Agreement, adopt the Resolution, and authorize the signing of State/Federal agreements as required.

Attachment: CIP Sheet, Resolution, and Agreement.

First Published in the Wichita Eagle on January 30, 2009

RESOLUTION NO. 09-028

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE TO IMPROVE THE INTERSECTION OF K-96 HIGHWAY AND HOOVER ROAD (472-84780).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita, finds it necessary to make certain related improvements as follows:

The design of an interchange as necessary for a major traffic facility.

SECTION 2: The total cost is estimated not to exceed \$150,000, exclusive of the costs of interest on borrowed money, with the total paid by the issuance of bonds by the City of Wichita at large.

SECTION 3: That the advisability of said improvements is established and authorized by K.S.A. 13-1024c and City of Wichita Charter Ordinance No. 156.

SECTION 4: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 27th day of January, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

CAPITAL IMPROVEMENT																			
PROJECT AUTHORIZATION																			
CITY OF WICHITA																			
		USE: To Initiate Project <input checked="checked" type="checkbox"/> X To Revise Project <input type="checkbox"/>		1. Prepare in triplicate 2. Send original & 2 copies to budget. 3. City Manager to sign all copies. 4. File original w/ initiating resolution in City Clerk. 5. Return 2nd copy to initiating department. 6. Send 3rd copy to Controller.															
1. Initiating Department Public Works	2. Initiating Division Eng	3. Date 1/5/2009	4. Project Description & Location K-96 & Hoover Interchange																
5. CIP Project Number F-	6. Accounting Number	7. CIP Project Date (Year) 2009	8. Approved by WCC Date																
9. Estimated Start Date As Required	10. Estimated Completion Date As Required		11. Project Revised																
12. Project Cost Estimate																			
ITEM	GO	SA	LST	TOTAL															
Right of Way																			
Paving, grading & const.			\$150,000	\$150,000															
Bridge & Culverts																			
Drainage																			
Sanitary Sewer																			
Sidewalk																			
Water																			
Streetscape																			
Totals			\$150,000	\$150,000															
Total CIP Amount Budgeted																			
Total Prelim. Estimate																			
12A. <table style="width: 100%; margin-top: 10px;"> <thead> <tr> <th></th> <th style="text-align: center;">Yes</th> <th style="text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td>Platting Required</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Lot Split</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Petition</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Ordered by WCC</td> <td style="text-align: center;"><input checked="checked" type="checkbox"/> X</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>						Yes	No	Platting Required	<input type="checkbox"/>	<input type="checkbox"/>	Lot Split	<input type="checkbox"/>	<input type="checkbox"/>	Petition	<input type="checkbox"/>	<input type="checkbox"/>	Ordered by WCC	<input checked="checked" type="checkbox"/> X	<input type="checkbox"/>
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Platting Required	<input type="checkbox"/>	<input type="checkbox"/>																	
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Petition	<input type="checkbox"/>	<input type="checkbox"/>																	
Ordered by WCC	<input checked="checked" type="checkbox"/> X	<input type="checkbox"/>																	
Remarks: <div style="text-align: center; margin-top: 20px;">Design Only</div> <div style="text-align: center; margin-top: 20px;">472-84780</div>																			
13. Recommendation: Approve the Design Project, Agreement and Resolution																			
Division Head 	Department Head 	Budget Officer 	City Manager 																
Date		Date																	

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

K-96 & HOOVER INTERCHANGE

THIS AGREEMENT, made this _____ day of _____, 2008, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

K-96 & HOOVER INTERCHANGE
(Project No. 472 84780)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing an interchange at K-96 and Hoover and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$20,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 472 84780

\$110,507.00

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks.

Accumulated partial payments for the PROJECT shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement.

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 - 2. Additional design services not covered by the scope of this agreement.
 - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 - 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a

waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, City Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

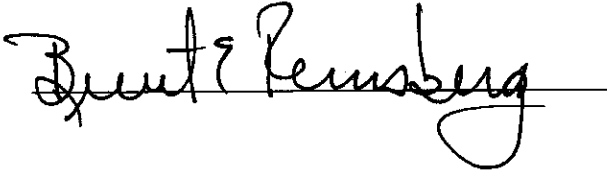
APPROVED AS TO FORM:


Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANT, P.A.

 Principal
(Name & Title)

ATTEST:



SCOPE OF SERVICES
K-96 & HOOVER INTERCHANGE
(Project No. 472 84780)

The City of Wichita proposes to construct an interchange at K-96 and Hoover.

TYPE OF SERVICES: Study and design to determine Right-of-Way and Right-of-Way Documents

DESCRIPTION OF SERVICES: Provide engineering services for the determination of Right-of-Way requirements for a diamond interchange at K-96 & Hoover.

The work will be conducted under the direction of the City Engineer or his designated representative, with milestone reviews to be coordinated with the Kansas Department of Transportation.

Phase I: Construction Estimate, Right-of-Way Plans, and Tract Maps

Task 1: CONCEPT STUDY

Prepare and present an analysis of a diamond interchange.

Task 2: ENVIRONMENTAL DOCUMENTATION

Not included in Phase I.

Task 3: FIELD SURVEYS

Perform aerial photography, mapping and field surveys to establish horizontal and vertical control, cross-sections, drainage areas, existing utilities, property ownership, and other features that could affect the design. Provide topography in the form of contours and a TIN. Provide benchmarks and survey control coordinates.

Task 4: ROADWAY DESIGN

Develop the interchange geometrics considering current AASHTO design criteria. Produce "Right-of-Way" plans. Determine the location of the ramp terminals. Determine the length of auxiliary, acceleration, deceleration, and turn lanes. Determine the lane configuration and length on Hoover. These plans are to indicate construction limits and right-of-way requirements.

Although the bridges over Hoover are not being replaced at this time, prepare an alternate design on Hoover with a six-lane section under K-96. The Right-of-Way on Hoover is to be based on this design.

Develop plans including title sheet, typical sections, plan, profile and cross-sections to the extent necessary to determine the construction limits and right-of-way requirements.

Task 5: CONSTRUCTION ESTIMATE

Provide an estimated cost of construction.

Task 6: TRAFFIC

Develop capacity and operational analysis based on traffic projections furnished by the consultant. Develop the traffic volumes using the consultant's best judgment.

Task 7: DRAINAGE

Conduct a limited hydrologic and hydraulic study of the project drainage area to the extent necessary to identify right-of-way impacts. Develop the overall drainage plan to the level necessary for delineating the right-of-way necessary for on-site and outfall drainage systems.

Task 8: BRIDGES

The existing bridges are not replaced as part of this project. Any modifications required are to be determined but not detailed as part of this work.

Task 9: GEOTECHNICAL ENGINEERING

Not included in Phase I.

Task 10: RIGHT-OF-WAY (TRACT MAPS)

Provide a right-of-way strip map. Provide tract maps and legal descriptions necessary for right-of-way acquisition.

Task 11: RIGHT OF WAY ESTIMATE

Not included in Phase I.

Task 12: ART

Not included in Phase I.

Task 13: LANDSCAPING

Not included in Phase I.

Task 14: DOCUMENTATION

Provide the city with electronic drawing files, which are compatible with the city's computer system.

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 - 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be

canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council

SUBJECT: City of Wichita Point-to-Point Data Network Services

INITIATED BY: IT/IS

AGENDA: Consent

Recommendation: Approve the Addendum to Contract for design, installation and implementation of the Point-to-Point (P2P) Data Network Services with Electronic Technology, Inc (ETI).

Background: Due to many instances of slow and problematic transfer rates of data with the current leased buried cable network structure, the IT/IS Department decided to replace the leased service with a P2P telecommunications system.

On March 18, 2008, City Council granted approval of IT/IS to begin the P2P Wireless Data Network Project (Project).

After completing a thorough RFP and selection process, IT/IS approached City Council on July 22, 2008, for approval to award the Project contract to ETI, a company from Merriam, KS, specializing in the design, deployment and installation of networks utilizing radio frequency.

Due to time restrictions placed upon Federal funding identified for expenditure on the Project, the original contract with ETI was drafted in general contractual terms. However, a provision within the contract called for an Addendum which would address the Project process and design in greater detail.

After completing essential tasks necessary for a network design, such as spectrum analysis and line-of-sight surveys, a more accurate assessment of the backhaul infrastructure and connecting links has been obtained.

The resultant Addendum addresses items such as Project Scope, Installation Process, Federal Requirements, Traffic Management Procedures, System Testing, System Acceptance, Unit Pricing, Payment Process and System Warranty and Maintenance.

Financial Consideration: The total amount of the funding available for the project is \$1,292,372. The funding consists of an FHWA ITS Earmarked Integration Fund (\$646,186), FHWA ITS Demonstration Fund (\$387,711) and IT/IS Equipment Replacement Fund (\$258,475).

All monies involved have received approval from the funding parties for expenditure upon the Project and have been encumbered for this purpose.

Goal Impact: This project addresses the Internal Perspective goal by influencing the following indicators: Improve Technology Efficiencies and Increase Productivity.

Legal Considerations: The Addendum to Contract has been reviewed and approved by the City and ETI legal staff.

Recommendations: Approve the Addendum to Contract for design, installation and implementation of the Point-to-Point Data Network Services with Electronic Technology, Inc.

ADDENDUM TO CONTRACT FOR IMPLEMENTATION OF A WIRELESS COMMUNICATION NETWORK

THIS CONTRACT ADDENDUM, by and between the **City of Wichita, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **ELECTRONIC TECHNOLOGY, INC.**, a Kansas Corporation, hereinafter called "**ETI**", shall become effective as of the date of the last required signature.

WITNESSETH THAT:

WHEREAS, the **CITY** and **ETI** entered into an original "CONTRACT FOR IMPLEMENTATION OF A WIRELESS COMMUNICATION NETWORK", for design, installation, deployment and maintenance of a wireless communication network, dated July 23, 2008, to a site, or collection of site locations, for the **CITY** as per the bid FP800044 and scope of services set forth in the contract; and

WHEREAS, **ETI** shall provide to the **CITY** all the commodities and/or services specified in the Request for Qualifications (RFQ) under Formal Proposal Number FP800044, its response to the Formal Proposal Number FP800044 and all the provisions and scope of services specified in the original contract, which is incorporated herein by this reference the same as if it were fully set forth; and

WHEREAS, Section 1c of the original contract identified an addendum to be created following meetings between the **CITY** and **ETI**, discussing pertinent issues regarding the design, structure, installation and operation of the resultant Wireless Communication Project (Project); and

NOW, THEREFORE, the above named parties hereby agree, covenant and contract with each other that the terms of the RFQ, **ETI**'s response and original contract, in addition to the following terms of this addendum, are hereby affirmed and executed for and on behalf of these parties, for the life of the Project:

1. Contact: The **CITY** and **ETI** shall maintain representatives to act as the contact person for each party of the **CITY** Project:

a. The contact person from the **CITY** shall be:

Dennis McHugh, Project Manager
316-268-4592

DMcHugh@wichita.gov;

b. The contact persons from **ETI** shall be:

Dan Carr, Certified Engineer, or
Brad Peterson, Project Manager or
Barbara Carr, **ETI** Administration
913-962-8083

DCarr@directmw.com,

BPeterson@directmw.com,

BCarr@directmw.com .

c. **ETI** shall provide a reasonable response to maintenance and/or emergency situations which may arise on the Project. **ETI** shall notify the **CITY** of any additional contact persons or numbers to be used in connection with such a procedure.

2. Scope of Work:

a. The **CITY** shall authorize **ETI** to proceed with installation, and **ETI** agrees to install the wireless communication infrastructure, which shall service all agreed upon facilities and traffic signal locations of the Project, based on a Task Order process. Each Task Order, jointly prepared by the **CITY** and **ETI**, will include a schedule for the installation, a list of any communication and traffic signal hardware and software to be installed and a list of the communication links to be established and made ready for testing (see Section 5);

b. **ETI** shall be responsible for providing all site surveys, material, labor and incidental equipment (see Section 7b) necessary to complete and make operational, each designated communication link listed on a Task Order;

c. **ETI** agrees that prior to the installation of any equipment to a single or multiple site location(s), intended to be placed on the **CITY's** wireless network system, **ETI** shall coordinate the work through the **CITY's** Project Manager. The Project Manager will, in turn, coordinate with **CITY** Network and Traffic Engineering staff, in accumulating information relating to site location, facility access, attachment of equipment to a structure, provision of equipment, an appropriate time for installation, required site preparation and network parameters (i.e. IP addressing, etc.);

d. Upon receipt of a Task Order, **ETI** shall install, integrate and activate the Alvarion radio and antenna equipment and, if required, traffic signal hardware. **ETI** shall also demonstrate a test performance of the installed equipment (see Section 5);

e. Prior to any installation, **ETI** shall perform Line of Sight (LOS) and Spectrum surveys for identified sites to determine network link capability. Once the surveys have been completed, **ETI** shall present the **CITY** with a network design indicating the preferred deployment;

f. **CITY** network equipment necessary for connectivity of a facility, which is listed on a Task Order, shall be purchased, installed, configured and powered-on by the **CITY**, prior to the beginning of an installation by **ETI**. **ETI** shall assist the **CITY** in determining which facility equipment will need replacement;

g. **CITY** network equipment necessary for connectivity of a traffic signal, which is listed on a Task Order, shall be purchased, installed with firmware and have timing patterns set and tested by the **CITY**, prior to the installation which shall be performed by **ETI** (see Section 3d). Should the Project include Sedgwick County traffic signals, a new addendum shall be drafted to address these installations;

h. In the event that the **CITY** or **ETI** find it necessary to propose a change to any portion of the Scope of Work, either party shall schedule a meeting to assess any respective changes to the project (i.e. design, scheduling, equipment, pricing, etc.);

i. **ETI** shall be responsible for transport, inventory, handling, installation, and safeguarding on a worksite, of all equipment furnished by **ETI** and used on the Project;

j. The **CITY** shall be responsible for the safeguard of all equipment placed in storage at a **CITY** facility;

k. The **CITY** and **ETI** shall jointly work on the configuration of all equipment located at an installation facility or location;

l. Should there be a need for any additional amendments to this document, or any Task Order, during the life of the Project, the resulting document shall require the signature of both the **CITY** and **ETI**.

3. Site Installation:

a. The **CITY** provided **ETI** with a list and set of maps of facilities and traffic signal locations and/or corridors to be the initial implementation sites for the wireless

network. The possibility of additions/deletions to that list may occur, as the Project progresses. Any changes to the list shall be compensated as per the City of Wichita Communications Network Items (EXHIBIT A) and require the signature of both the **CITY** and **ETI**. The **CITY** shall coordinate with **ETI** for scheduling the installation and integration of any additional worksites to the wireless network;

b. Any individual facility or intersection which has been determined to have connectivity to the **CITY** network via a wireless link, shall be referred to as a "Site Location";

c. Any group of site locations which utilize a specific tower for connectivity to the **CITY** network via a wireless link, shall be referred to as a "Pod";

d. Regarding **CITY** controller equipment necessary for connectivity of a traffic signal, the **CITY** shall have the units prepared (see Section 2g) and ready for installation by **ETI**, the cost which shall be inclusive to the Unit Pricing;

e. **ETI** agrees that all services rendered shall be performed by or under the supervision of a certified Alvarion technician or engineer;

f. **ETI** agrees that all services rendered shall be in compliance with all applicable laws, statutes, codes, ordinances, rules, regulations and industry standards (see Section 8a) and completed in a manner consistent with the level of skill ordinarily exercised by members of the profession currently practicing under similar conditions;

g. Should **ETI** have knowledge of an event which may delay the completion of a Task Order and/or the Project, **ETI** shall notify the **CITY** in writing, at its earliest opportunity, and provide as much detail as possible on the cause of the delay;

h. Should the **CITY** have knowledge of an event which may delay the completion of a Task Order and/or the Project, the **CITY** shall notify **ETI** in writing, at its earliest opportunity, and provide as much detail as possible on the cause of the delay;

i. Should a delay occur on a Task Order and/or the Project, **ETI** and the **CITY** shall jointly decide on a plan and schedule for a solution to remedy the cause of the delay. Any changes shall be documented in writing and signed by the **CITY** and **ETI**;

j. If a Task Order and/or the Project encounters a delay which is solely due to the fault of **ETI**, **ETI** shall be held responsible for the entire amount required to remedy the cause of the delay;

k. If a Task Order and/or the Project encounters a delay which is solely due to the fault of the **CITY**, the **CITY** shall be held responsible for the entire amount required to remedy the cause of the delay;

l. If a Task Order and/or the Project encounters a delay which is solely due to the fault of **ETI**, and an additional cost occurs on the Project as a result of the delay, **ETI** shall be held responsible for the entire amount required to remedy the cause of the delay plus the additional cost;

m. If a Task Order and/or the Project encounters a delay which is solely due to the fault of the **CITY** and an additional cost occurs on the Project as a result of the delay, the **CITY** shall be held responsible for the entire amount required to remedy the cause of the delay plus the additional cost;

n. Should **ETI** fail to notify the **CITY** of an event which shall cause a delay on a Task Order and/or the Project and the event was through no fault of **ETI**, and the Project encounters an additional cost, as a result of the failure by **ETI**, **ETI** shall be held fully responsible for only the additional cost, above the normal amount of cost to remedy the cause of the delay;

o. Should the **CITY** fail to notify **ETI** of an event which shall cause a delay on a Task Order and/or the Project, and the event was through no fault of **ETI**, and the Project encounters an additional cost, as a result of the failure by the **CITY**, **ETI** shall not

be held accountable for any amount required to remedy the cause of the delay, nor any additional cost;

p. For purposes of this Section 3, notice by one party to the other via email shall constitute sufficient written notice.

4. Traffic Management:

a. To provide an adequate review period, **ETI** shall provide a Traffic Management Schedule (TMS) to the **CITY** a minimum of 72 (seventy-two) hours prior to starting any work or making any changes to any existing traffic management schedule. The TMS document shall include traffic control measures following the MUTCD standard, hours for deploying the traffic control measures and work hours associated with the task;

b. **ETI** agrees to notify the **CITY** a minimum of 48 (forty-eight) hours prior to closing any active traffic lanes or shifting any traffic onto a detour route;

c. Should a situation arise that requires **ETI** to immediately respond to a location to resolve a problem, and the solution shall require the use of traffic control measures, **ETI** shall notify the **CITY** Project Manager, as soon as practical. If the Project Manager is not available, **ETI** shall contact the **CITY** Traffic Engineering Division, as soon as practical;

d. **ETI** shall not schedule any work to be performed which shall require a closing or shifting of traffic lanes between 6:00 (six) to 8:30 (eight-thirty) a/m and 4:00 (four) to 7:00 (seven) p/m. The **CITY** prefers not to permit any nighttime work, which consists of 1 (one) hour prior to sunset to 1 hour following sunrise;

e. Should a situation arise that requires **ETI** to schedule road closure other than the hours listed in Section 4d, **ETI** shall contact the **CITY** Project Manager as soon as practical to establish a TMS;

f. Should a situation arise that requires **ETI** to immediately respond to a location to resolve a problem, the **CITY** shall notify **ETI** as soon as practical;

g. **ETI** shall not perform any work on roadways during holidays or scheduled special events;

h. **ETI** agrees that it will be responsible for maintaining all traffic flow through the worksite during the work period;

i. **ETI** agrees that, at a minimum, at least one lane of traffic shall be kept open for traffic flow at all times. If movement of equipment to complete the work will require a complete shutdown of the roadway, the **CITY** shall determine the TMS for such time;

j. **ETI** agrees that any closing or shifting of traffic lanes shall be scheduled for the minimum amount of time to complete the work. Any closing shall not allow for any disruption and backup of traffic flow for more than a 15 (fifteen) minute period. If during the work period, traffic flow is backed up or disrupted for more than a 15 minute period, **ETI** agrees to contact the **CITY** to arrange for adjustments to the TMS for the worksite;

k. **ETI** agrees to not begin a roadway closing unless it has all required material and personnel available to complete the work;

l. **ETI** agrees to notify the **CITY**, as soon as practical, of any postponement to an approved roadway closing or change to TMS, due to inclement weather, lack of material or other reasons;

m. The **CITY** agrees to notify **ETI**, as soon as practical, of any postponement to an approved roadway closing or change to TMS;

n. For purposes of this Section 4, notice by one party to the other via email shall constitute sufficient notice;

o. Notwithstanding any of the notice requirements listed in Section 4, in case of an emergency, **ETI** shall be permitted to respond as necessary to resolve the problem and shall notify the **CITY** as soon as practical thereafter, if prior notice was not possible or feasible.

5. Testing: The purpose of testing will be to:

a. Verify the establishment of an active upload/download communication link from the City Hall building Network Operations Center (NOC) to each backhaul and distribution antenna (Access Unit – AU, Subscriber Unit – SU) and radio (P2P, P2MP) within a pod to determine:

i. System Reliability (99.99%):

1. Strength of signal;

2. Minimum and optimum level of signal for proprietary communication signal.

ii. System Redundancy - Potential for path loss due to obstructions, multi-paths, antenna heights and link distances.

iii. Quality of Service (QOS):

1. Adherence to the **CITY**'s network and data-link protocols;

2. A system latency of not greater than 5ms on the network backhaul links;

3. Protection of the wireless network system at the physical, network and application layers.

iv. Performance of the central management system.

b. Following the installation of any equipment by **ETI**, which renders a site location ready for connection to the **CITY** network, **ETI** shall coordinate with the **CITY** Project Manager to test the site location for determination of the full functionality and operational integration of the newly installed portion of the Project. The location(s) for the testing of the equipment shall be determined by the **CITY**:

i. Each radio installed at a site location shall be tested utilizing a ping method which shall be set for a minimum of 10 loops. The round trip time for each ping test shall be recorded to establish the optimum average for trip latency;

ii. Perform adjustment to each antenna, radio and power level to optimize and record the communication link of each path;

iii. Once each path has been optimized, utilize the ping method, Iperf and manufacturer's configuration utility at the tower/structure to record the trip latency, throughput and SNR for each single link between a pod's AU and SU.

c. Following the installation and acceptance period of all site locations which comprise a pod, **ETI** shall coordinate with the **CITY** Project Manager to conduct a final system acceptance test of that individual pod;

i. Utilizing the ping method, Iperf and the manufacturer's configuration utility at the tower/structure, record the trip latency, throughput and Signal-to-Noise Ratio (SNR) for each single link defined by the pair of backhaul radios and for the cumulative link from the tower/structure to the NOC located in the City Hall building.

6. Acceptance:

a. Following a successful test performed for viability of a network connection and operational performance of a site location, and the specific site remains in the same functional mode of operation for a period of seventy-two (72) hours, the **CITY** agrees to accept the site installation for unit pricing payment;

- b. Performance or throughput goals shall be:
 - i. Backhaul links:
 - 1. Licensed – 150Mbps minimum;
 - 2. Collector tower/structure – 27Mbps minimum;
 - 3. External TOC – 27Mbps minimum.
 - ii. Distribution links:
 - 1. Intersection (3Mbps-BA900) - 1.5Mbps minimum;
 - 2. Intersection (6Mbps-VL 5,3, 5.8) – 3Mbps minimum;
 - 3. Facility (54MbpsVL 5.3, 5.8) – 8 to 27Mbps minimum;
 - 4. Facility (VL cell extender BA 900) – 1.5 Mbps minimum.
- c. If the throughput goals are not attainable, **ETI** will provide the **CITY** with solutions to achieve improvement;
- d. Following acceptance of a site location or locations, **ETI** shall provide the **CITY** with hard and electronic copies of as-built drawings, completed in Microsoft Visio, and any associated specifications and drawings;
- e. Any payment rendered under this contract shall not constitute full acceptance of the work performed by **ETI**.

7. Payment:

- a. The **CITY** and **ETI** agree that all work shall be paid on a “Unit Price” basis. The provisions governing the Unit Price are established in Section 2.0 of the Original Contract. The pricing associated to a specified type of unit install can be found in the City of Wichita Communications Network Items (see EXHIBIT A). All pricing for equipment shall be based upon the costs listed in the original bid proposal;
- b. Any component not listed within EXHIBIT A, but necessary for the system to function, shall be considered incidental and shall be furnished, installed and integrated by **ETI**. The term “Incidental” is defined as an item(s) which is associated or included in the cost of a Unit Price item and which shall not be paid for separately (see EXHIBIT A);
- c. **ETI** shall submit monthly itemized invoices covering all charges for the services delivered during the preceding month. The submittal of an invoice from **ETI** to the **CITY** shall be based upon a successful acceptance test of each site location listed within the invoice;
- d. Upon processing of a payment for an accepted site location to **ETI**, the **CITY** shall retain an amount of 10% (ten percent), to be withheld until final system acceptance testing of the associated pod;
- e. Following the successful acceptance testing of a pod, **ETI** shall submit an invoice to the **CITY** requesting remittance of the associated 10% amount which has been retained;
- f. The **CITY** is exempt from the payment of City, State and Federal taxes, thus taxes will be excluded from any invoice pricing;
- g. **ETI** shall not issue any purchase orders or procure any equipment, supplies or materials for the Project, without the prior written approval of the **CITY** (see EXHIBIT A);
- h. Should any work performed by **ETI** require an hourly wage basis for payment, an invoice listing the individuals who performed the work, the individuals rate classification, hourly rate, type of work performed and the number of hours required to perform the work, shall be presented to the **CITY**;
- i. With each invoice submitted by **ETI**, a lien waiver respective of the services listed in the invoice, shall also be submitted to the **CITY**;

j. **ETI** agrees to follow the provisions of accounting and record keeping as established under Section 2e of the original contract.

8. Warranty:

a. All electrical work performed by **ETI** shall conform to the standards of the National Electrical Manufacturers Association (NEMA), the Underwriters Laboratories Inc. (UL), the Electrical Testing Laboratories (ETL), the National Electrical Testing Association (NETA), or the Electronic Industries Association (EIA), as and if applicable. All materials and workmanship shall conform to the requirement of the National Electric Code (NEC);

b. Following the acceptance of a site location, the site installation consisting of equipment and service, shall enter a warranty period of one year.

9. Independent Contractor:

a. It is agreed between the **CITY** and **ETI** that any work performed by **ETI** on the Project, shall be as that of an independent contractor. **ETI** shall be responsible for the employment and direction of all persons performing work under this contract. Such persons shall be the sole employees or subject to the control and direction of **ETI**;

b. **ETI** shall assign only full-time regular employees in connection with the performance of the services necessary to deploy and implement the **CITY** Project. If **ETI** wishes to use other than full-time employees, it must first obtain the written approval of the **CITY**;

c. If the **CITY** determines, with reasonable cause, that an employee from **ETI** or **ETI** subcontractor, is detrimental to the success of the Project, the **CITY** shall have the right to request **ETI** to remove and, if necessary, suitably replace those person(s).

10. Work Restrictions: The **CITY** and **ETI** have agreed upon the following climbing policy established for this contract:

a. Excluding holidays and unless a climb has been scheduled outside of the following timeframe, the acceptable time of day for climbing will be from 2 (two) hours following sunrise to 2 (two) hours prior to sunset, Monday through Friday;

b. **ETI** will not be expected to perform any climbing activity during periods of rain, lightning, snow, registered temperatures below 32 degrees and registered wind speeds over 20 miles per hour.

11. Wages:

a. **ETI** shall be required to pay not less than the prevailing hourly rate of wages, as determined by the Sedgwick County Schedule of Labor Classifications and Wage Rates;

b. **ETI** shall be required, as well as all subcontracts, to adhere to all rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR, parts 1, 3, and 5.

12. Existing Equipment: **ETI** agrees to use any real property, equipment and supplies for appropriate purposes associated with this Contract.

13. Maintenance Agreement: The **CITY** and **ETI** shall create and agree upon a Maintenance Agreement for the Project.

14. System Network and Monitor:

- a. **ETI** shall provide the **CITY** with specifications for the hardware required for the network system;
- b. The **CITY** will purchase the:
 - i. The hardware required for the Central Management system;
 - ii. The license for Solarwinds Orion Network Performance Monitor software (SL 250);
- c. **ETI** shall be responsible for:
 - i. The installation and configuration of the Solarwinds Orion product;
 - ii. The training of **CITY** employees to utilize the Solarwinds Orion product, which shall consist of a minimum of two days.
- d. **ETI** shall bill the **CITY** for installation, configuration and training at their normal standard hourly rate of eighty-five dollars (\$85.00) per hour.

15. Indemnify:

- a. **ETI** agrees to indemnify, defend and hold the **CITY**, its directors, officers, agents and employees harmless from and against any and all losses, claims, demands, actions, suits, judgments, liabilities, injuries, damages and expenses (including but not limited to attorney fees, expense of litigation, fines and penalties) that **ETI**, or anyone associated with **ETI**, may have incurred by reason of any injury, sickness, disease or death to any person or any damage or injury to any property to the extent arising out of or occurring in connection with the wireless project or any of **ETI**'s wrongful or negligent acts or omissions;
- b. **ETI** warrants that any services to be provided and the use of any software, information, apparatus, documentation, method or material product furnished by **ETI**, under this contract, shall not infringe any patent, copyright, trade secret or other proprietary right of any third party. **ETI** shall, at its expense, fully defend the **CITY** against any and all claims, suits, actions or proceedings alleging that the use of any software, information, apparatus, documentation, method or material product or execution of services furnished by **ETI**, under this contract, constitutes patent infringement or a violation of any other proprietary rights;
- c. **ETI** shall defend, indemnify and hold the **CITY** harmless from and against all liens and claims of lien arising out of the performance of the work completed on the Project.

16. Arbitration. **ETI** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

17. Termination:

- a. This contract is subject to termination by the **CITY**, at its discretion, at any time within the Project's life or within any successive renewal, upon thirty (30) days written notice to **ETI**. **ETI** shall be provided a reasonable time within which to remedy such deficiencies. **ETI** shall be entitled to receive just and equitable compensation for any accepted work completed prior to the effective date of such termination;
- b. **ETI** may terminate this Contract at any time for failure of the **CITY** to comply with any material terms or conditions of the Contract, effective thirty (30) days following receipt of such notice by the **CITY**. The **CITY** shall be provided a reasonable time within which to remedy such deficiencies;

c. **ETI** agrees that it will remain compliant with all applicable national, local or other laws and regulations that affect **ETI**'s delivery of services under this Contract;

d. **ETI** agrees that it is not involved in any outstanding litigation, arbitrated matter or any other dispute which, if rendered an unfavorable judgment, would reasonably have the potential to affect **ETI**'s ability to fulfill its obligations under this Contract.

18. Confidentiality:

a. The **CITY** and **ETI** agree that the term "Confidential" relates to any and all information and documentation that is not readily available to the general public and that **ETI** will take all precautions to insure that such information or documentation belonging to the **CITY** or the project, maintain such a confidential nature;

b. **ETI** agrees that all originals and copies of information, used or developed under this Contract, shall be provided to the **CITY** and that the **CITY** maintains a non-exclusive license to use any drawings, plans, spreadsheets, blueprints, schematics, flow charts or diagrams, specifications and any and all other documents, produced in any format, for any purpose;

c. The **CITY** agrees that **ETI** may retain one copy of the same information for its files;

d. **ETI** agrees that it may not use the **CITY**'s or the Project's name for any promotional purposes without written prior consent from the **CITY**.

19. Discrimination: **ETI** shall comply with all applicable requirements of the **CITY**'s Revised Non-Discrimination and Equal Employment / Affirmative Action Program Requirement Statement for Contracts and Agreements, attached hereto as EXHIBIT B.

20. Representative's Authority to Contract. By signing this Contract, the representative of **ETI** represents the he or she is duly authorized to execute this Contract, and that **ETI** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

The City of Wichita:

Carl Brewer, Mayor

Approved as to Form:

ATTEST:

Gary E. Rebenstorf
Director of Law

Karen Sublett
City Clerk

Date

Date

Electronic Technology, Inc.:

Barbara Carr
President

Date

EXHIBIT A

Communication Network Items

<u>Item</u>	<u>Description</u>	<u>Cost Per Unit</u>
1. Licensed 18GHz Microwave Link (P2P)	Provide all labor and incidentals to install and test the CITY 18GHz radios, antennas and links between designated towers. Cost includes antennas, radios, necessary mounting brackets, cabling, connectors, grounding and lightning protection and installation labor to install one side of the system. <i>A complete link will be double the unit price.</i>	\$9,000
2. Unlicensed 5.8GHz Radio, B14, B28 B100 (P2P)	Provide all labor and incidentals to install and test the CITY 5.8GHz radios, antennas and links between designated towers. Cost includes antennas, radios, mounting brackets, cabling, connectors, grounding and lightning protection and installation labor.	\$4,500
3. Unlicensed 5.3, 5.4, 5.8GHz VL AU (P2MP)	Provide all labor and incidentals to install and test the CITY 5.3, 5.4, 5.8GHz AU radios and antennas using a designated tower in each pod. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.	\$1,700
4. Unlicensed 900MHz AU (P2MP)	Provide all labor and incidentals to install and test the CITY 900MHz AU radios and antennas using a designated tower in each pod. Cost To include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.	\$1,800
5. Install Electronic Equipment Cabinet in Existing Tower Shelter	Provide all labor, incidentals and power conditioning equipment (UPS) required to install and test the equipment contained in the ETI supplied electronic equipment cabinet at designated tower(s).	\$13,000
6. 5.3, 5.4, 5.8GHz SU With Terminal Server	Provide all labor and incidentals to install and test the CITY 54Mbps 5.3, 5.4, 5.8GHz SU radios and antennas, terminal server, grounding and lightning protection. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, control terminal server and associated cabling, other cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.	\$1,850
7. 5.3, 5.4, 5.8GHz SU	Provide all labor and incidentals to install and test the CITY 54Mbps 5.3, 5.4, 5.8GHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.	\$1,750
8. 900 MHz SU with With Terminal Server	Provide all labor and incidentals to install and test the CITY 900MHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, control terminal server and associated cabling, other cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.	\$1,975
9. 900MHz SU	Provide all labor and incidentals to install and test the CITY 900MHz SU	\$1,720

radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion.

10. 5.3, 5.4, 5.8GHz SU with Terminal Server and Fiber Adjustment	Provide all labor and incidentals to install and test the CITY 5.3,5.4, 5.8GHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, control terminal server and associated cabling, other cabling, connectors, lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion. Modify fiber connection to provide the CITY communication connectivity to adjacent traffic signal controllers.	\$1,975
11. 5.3, 5.4, 5.8GHz SU with Fiber Adjustment	Provide all labor and incidentals to install and test the CITY 5.3, 5.4, 5.8GHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion. Modify fiber connection to provide the CITY communication connectivity to adjacent traffic signal controllers.	\$1,800
12. 900MHz SU with Terminal Server and Fiber Adjustment	Provide all labor and incidentals to install and test the CITY 900MHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, control terminal server and associated cabling, other cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion. Modify fiber connection to provide the CITY communication connectivity to adjacent traffic signal controllers.	\$2,075
13. 900MHz SU and Fiber Adjustment	Provide all labor and incidentals to install and test the CITY 900MHz SU radios and antennas. Cost to include antennas, radios, one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, installation labor and testing of the radio link only. Cost does not include conduit expansion. Modify fiber connection to provide the CITY communication connectivity to adjacent traffic signal controllers.	\$2,175
14. Controller Fiber and Terminal Server Adjustment	Provide all labor and incidentals to install and test terminal server. Cost to include fiber jumpers, control terminal server and associated cabling and configuration time required to connect designated intersection to CITY communications network through a designated controller with installed SU.	\$1,475
15. Controller Fiber Adjustment	Provide all labor and incidentals to install and test Ethernet switch to connect designated intersection to CITY communications network through a designated controller with installed SU.	\$1,350
16. External TOC Connection	Provide all labor and incidentals to install and test CITY 5.8GHz radios and antennas between an external TOC and a CITY communication tower. Cost to include one Pelco Astro bracket for each antenna mounting, cabling, connectors, grounding and lightning protection, APC 750 UPS and labor installation to test radio link only.	\$3,100
17. City Workstation	This item will be supplied by a third party via a CITY approved VPN session.	\$1,100
18. 5.3, 5.8GHz SU / 900MHz AU Cell Extender(CX)	Provide all labor and incidentals to install and test CITY 5.3, 5.8GHz SU / 900MHz AU CX radios and antennas at designated locations in each pod. CX will be installed at an existing traffic signal cabinet location. Install and	\$4,000

test aluminum auxiliary cabinet with factory engineered built-in thermostatically controlled heater with a locking door mechanism. Install and test grounding and lightning protection for new communication equipment. Antennas and radios to be attached and adjusted on existing pole and existing conduit shall be utilized. The auxiliary cabinet will house the CX IDU.

19. Upgrade 170 to 2070 Unit	Remove existing 170 controller unit and install 2070 unit in conjunction with scheduled SU intersection installation (see Sections 2g and 3d).	\$82
20. Upgrade NEMA to 2070 Unit	Remove existing NEMA controller unit and install 2070 unit in conjunction with scheduled SU intersection installation (see Section 2g).	\$82
21. Install CCTV IP Camera and Switch	Provide all labor and incidentals to install and test an IP-based CCTV camera and switch at a scheduled intersection installation.	\$4,700
22. Install Encoder, Mux and Switch for Intersection Video Detection	Provide all labor and incidentals to install and test a mux, video encoder and switch at a scheduled intersection installation.	\$2,737
23. Configure and Install Router / Switch	Install facility router or switch and perform operational and security configuration (unit price based on installation and configuration of 50 units).	\$480
24. Configure Network Management	Labor to integrate towers, facilities and/or intersections into management software for configuration of alarm events and to enable on-going management.	\$100
25. External Equipment Rack	Provide all labor and incidentals to install external equipment rack. The external equipment rack shall be mounted at tower locations that do not have an existing tower shelter available to house the necessary wireless and network equipment. The equipment rack shall meet current standard industry specifications.	\$12,500
26. Traffic Enclosure	Provide all labor and incidentals to supply and install a traffic enclosure at existing traffic signal cabinet. Cabinets shall be mounted to the existing signal cabinet and shall house the wireless radios and other required equipment.	\$9,500
27. Traffic Permits	Cost will be determined according to the established CITY permit fee.	Per CITY Schedule
28. Hourly Rate Schedule	Administration, Project Management, In Shop Labor, Wireless Engineer, Senior Wireless Engineer, Field Installation Team (four staff members and vehicle) and Tower Climbing Team (two staff members).	See Hourly Rate Below
29. Tower Climbing (See Section 10)	Any tower work will require two staff members (minimum) onsite at all times. Cost will include a charge of a minimum of two hours and associated fuel.	\$390
<u>Personnel</u>		<u>Hourly Rate</u>
Administration		\$60.00
Project Management		\$95.00
In Shop Labor		\$75.00
Wireless Engineer		\$95.00
Professional Consulting		\$120.00
Phone Support during Normal Business Hours (Minimum one hour)		\$100.00
Service Call (Minimum Two Staff members)		\$1,850.00
Climbing Team (Minimum Two Staff Members)		\$390.00

EXHIBIT B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4)

employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
January 27, 2009

TO: Mayor and City Council

SUBJECT: Consent to Assignment of Agreements for Accounting System

INITIATED BY: IT/IS Department

AGENDA: Consent

Recommendation: Approve the Consent to Assignment and authorize the necessary signatures.

Background: Performance Series is the city's general ledger accounting, purchasing and fixed asset management system. A Master Services Agreement, Software License Agreement and Extended Warranty and Support Services Agreement have been in place with Tier Technologies, Inc. since October 15, 2002 between the City of Wichita and Tier Technologies, Inc. for support of the software.

Analysis: Performance Series was purchased by Cogsdale Holdings, Inc. from Tier Technologies, Inc. on December 1, 2008. The Consent to Assignment maintains the terms of the three existing agreements and assigns responsibility for execution to Cogsdale Holdings, Inc., the current provider of the product and support for it.

Financial Considerations: Ongoing support costs are not changing as a result of the change in ownership.

Goal Impact: Internal Perspective

Legal Considerations: The Agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Consent to Assignment and authorize the necessary signatures.



10780 Parkridge Blvd.
Suite 400
Reston, VA 20191
571.382.1000
Fax 571.382.1002
www.tier.com

Consent To Assignment

This is to notify the City of Wichita ("Client") of Tier Technologies, Inc.'s ("Tier") request to assign the following agreements between Tier and Client: Software License Agreement, Extended Warranty and Support Services Agreement, Master Services Agreement ("Contract") to Cogsdale Holdings, Ltd. ("Cogsdale") as of the Effective Date of December 1, 2008 pursuant to the terms of the "Agreement for Purchase and Sale of Assets" entered into by and between Tier and Cogsdale. Cogsdale shall comply with all the terms and conditions of the assigned Contracts.

Please indicate your consent to the assignment of the Contracts by executing the original of this Notice of Assignment and returning it to:

Keith Omsberg
General Counsel
Tier Technologies, Inc.
10780 Parkridge Blvd #400
Reston, VA 20191
571-382-1029

with a copy to:

Duncan Shaw
Co-President
Cogsdale, Inc.
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
902-446-7036

Agreed and accepted by:

Tier Technologies, Inc.

Cogsdale Holdings, Ltd.

City of Wichita

Signature

Signature

Signature

Printed Name

Printed Name

Printed Name

Title

Title

Title

Date

Date

Date



MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into as of October 15, 2002, between the City of Wichita ("Client") and Tier Technologies, Inc., ("Tier"), in accordance with the following:

1. **Projects and Services.** The parties anticipate that from time to time they will be in contact regarding Client's needs for assistance on clearly defined Projects ("Projects") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving Client's business performance, building or updating Client's computer systems, training of personnel to operate the same, creation or modification of software, and related consulting activities ("Services").
2. **Statement of Work.** Prior to the commencement of Services for any Project, Client and Tier shall mutually agree upon the terms and conditions required to complete a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed, the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. SOWs shall be consecutively numbered and created in accordance with Exhibit A attached hereto. Acceptance of Project-related deliverables, if required, shall be made in writing on the form attached hereto as Exhibit B. Unless expressly stated in the particular SOW, Tier may engage subcontractors and/or other consultants after first obtaining permission from Client, which permission shall not be unreasonably withheld. Tier shall be responsible for their performance. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. To the extent there is a conflict between this Agreement and the SOW, the SOW shall control. In the event Client neither signs nor objects in writing to a SOW but accepts the Services when commenced on a Project, then such shall be confirmation and acceptance of the terms of the SOW.
3. **Assistance.** Client shall timely provide all necessary assistance, cooperation, facilities (including access to systems and personnel that operate such systems), data, personnel and other information or materials reasonably required by Tier in order to perform the Services required under this Agreement and all applicable SOWs. Client's failure to provide such assistance shall constitute a material breach of this Agreement.
4. **Payment.** Payment shall be due from Client to Tier upon Client's receipt of Tier's invoice. If agreed to in the SOW, Tier may bill for any Project-related Expenses, including, but not limited to, travel-related expenses, supplies, hardware, equipment,

and software required to complete the applicable SOW. Unless otherwise agreed to in the SOW, meals for Tier staff working at Client site will be reimbursed at the maximum current Per Diem rate established by the Per Diem Committee for Wichita, Kansas available at <http://www.dtic.mil/perdiem/pdrform.html>. For SOWs that are of a longer-term nature, travel-related expenses shall also include any associated payroll taxes. Payment of Tier invoices may be made by electronic means. Failure to pay within thirty (30) days shall result in a charge of 1-1/2% per month until payment is received. Specific payment terms and associated acceptance criteria shall be set forth in the SOW. For Firm Fixed Price engagements, acceptance by the Client of specific deliverables shall be in writing in a form consistent with the Acceptance Form attached hereto as Exhibit B. Acceptance shall be deemed to have occurred if Tier has not received an Acceptance Form or notice of non-acceptance specifying in detail any alleged nonconformance within fifteen (15) days after the deliverable has been transmitted to Client.

5. **Term and Termination.** This Agreement shall commence on the date first above written and shall continue for a period of one year thereafter or for a period of one year after cessation of all services being performed under any SOW, whichever is longer, unless terminated in accordance with the provisions of this Agreement. Either party may terminate this Agreement or any SOW thereunder (i) immediately, if the other party becomes insolvent or files (or has filed against it) a petition in bankruptcy, or (ii) upon a material breach or failure to perform by the other party (including timely payment of invoices) which remains uncured after the completion of a sixty (60) day period from receipt of written notice of the breach. In the event of termination for any reason, Client agrees to pay Tier for the reasonable value of services performed.

Tier may immediately cease performance of services under this Agreement and any applicable SOWs executed hereunder in the event Client fails to timely pay invoices in accordance with this Agreement or any SOW.

Termination of this Agreement shall not affect rights and/or obligation of the parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such termination.

6. **Confidentiality.** The parties acknowledge that they, and each of them, may through this Agreement come into contact with or become aware of confidential information of the other party. Such information may include, but not be limited to, data, formulas, employee information, financial information, strategic plans, patterns, compilations, programs, devices, methods, techniques, or processes. The parties hereby agree to maintain such information as strictly confidential and solely for the benefit of the other party and shall not disclose or utilize such information in any manner whatsoever except in the normal course of and during performance of this Agreement. These obligations of confidence and non-use do not apply to information already available to the public at the time of disclosure; to information which hereafter becomes generally available to the public through no fault of the applicable party; to information which is

acquired from a third party having no obligation of confidence to the party whose confidential information is at issue; or to information previously known to the other party as evidenced by its existing written records. The obligation of confidence does not apply to information required to be disclosed by law, provided, however, that the disclosing party shall notify the other party promptly at any time it believes it is legally required to disclose confidential information and shall not disclose such confidential information until the other party has the opportunity to oppose such disclosure or obtain an acceptable protective order.

7. **Intellectual Property.** Client acknowledges that, except as otherwise expressly and mutually agreed to in writing signed by an authorized representative of Tier, Client shall have no right or entitlement to pre-existing intellectual property interests held by Tier notwithstanding that Tier may employ, disclose, and/or incorporate such intellectual property in performing the Services.
8. **Independent Contractor.** Tier is entering into this Agreement and shall continue during the term hereof to act consistent with the terms and conditions in this Agreement as an independent contractor and shall under no circumstances be construed as entering any other form of relationship with Client, such as, but not by way of limitation, a partnership, joint venture, or employer-employee relationship. In the course of performance of the terms and conditions of this Agreement and SOWs executed hereunder, neither Tier, nor any of its officers, employees or consultants, shall in any manner represent itself as an employee of Client or as having any authority whatsoever to represent or bind Client in any manner whether in the internal operations of Client and its business or to any member of the public or private communities outside of Client.
9. **Non-Solicitation and Non-Hire.** Client hereby acknowledges that Tier is in the business of providing consulting services through skilled individuals and that an important factor in Tier's continued business is building and retaining its workforce. Accordingly, unless otherwise mutually agreed by the parties in writing, Client agrees not to hire or to solicit for employment any employee or contractor of Tier during the term of this Agreement and for twelve (12) months thereafter. Client agrees to immediately pay to Tier 50% of the total expected first year compensation of any Tier employee that Client knowingly hires in contravention of this provision.
10. **Indemnification.** The parties hereby indemnify and hold each other and their respective employees, officers, consultants and other representatives, harmless from and against any and all causes of action, claims, losses, or liabilities, whether alleged or actual, including reasonable attorneys' fees, which are or may be caused by any act or omission of the indemnifying party or any one or more of its employees, officers, consultants, and other representatives arising out of the performance of the Agreement or any SOW executed thereunder.

11. **Limitation of Liability/Warranty.** In no event shall Tier be liable to Client in an action arising out of this Agreement or any SOW executed thereunder for any punitive, indirect, incidental, special or consequential damages including, but not limited to, loss of profits, revenue, data or use, whether in an action in contract or tort or under statute, even if Tier has been advised of the possibility of such damages. Tier's total liability for damages for any action associated with this Agreement shall in no event exceed two (2) times the amount of fees paid to it for the Services under the applicable SOW. EXCEPT FOR REPRESENTATIONS MADE EXPRESSLY HEREIN, OR UNDER THE APPLICABLE STATEMENT OF WORK, TIER MAKES NO GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED. TIER DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR ANY REASON.
12. **Severability.** If any word, phrase, clause, sentence, provision or paragraph of the Agreement is or shall be held invalid or unlawful for any reason, the same shall be deemed severed from the remainder hereof, and stricken therefrom, and shall in no way affect or impair the validity of this Agreement or any other portion thereof, and this Agreement shall otherwise remain in full force and effect.
13. **Successors and Assigns.** This Agreement shall be binding on and shall benefit the parties hereto, their respective successors, assigns and heirs. Neither party shall have the authority to assign the Agreement or any rights hereunder without the express written consent of the other party.
14. **Waivers.** The failure of either party to assert any claim or right against the other party regarding its obligations hereunder, in any one or more instances, shall not constitute a waiver of such claim or right with respect to future performance of such obligations and other obligations under the Agreement.
15. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties with respect to the subject matter hereof. This Agreement may not be modified or the parties released from their obligations hereunder except by an instrument in writing signed by authorized representatives of the parties.
16. **Survival of Provisions.** The rights and duties of the parties as set forth in paragraphs 6, 7, 9, 10, 11, 12, 14, 17, 18, and 19 shall survive the expiration, termination or cancellation of this Agreement and shall inure to the benefit of and be binding on their authorized assigns, successors, and legal representatives.
17. **Amendment.** This Agreement may only be amended in writing signed by both parties.

18. **Governing Law.** This Agreement shall be deemed a contract made under the laws of the State of Kansas, and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of such state without regard to its conflict of laws provisions.
19. **Notices.** Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally, by facsimile to the number indicated below, or mailed by certified or registered mail, postage prepaid, return receipt requested, to:

To Client: City of Wichita
Dept. of Finance
Attn: Kelly Carpenter
455 N. Main Street
12th Floor
Wichita, KS 67202
Fax: (316) 219-6266

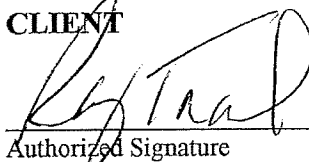
To Tier: Tier Technologies, Inc.
Legal Department
Attn: General Counsel
Suite 250
1350 Treat Blvd.
Walnut Creek, CA 94596
Fax: 925-946-0923

Any such notice or other communication shall be deemed to be given as of the date it is personally delivered, sent by facsimile (as evidenced by electronic confirmation of receipt), or three days from when placed in the mails in the manner specified. Neither party shall be allowed to refuse acceptance of delivery.

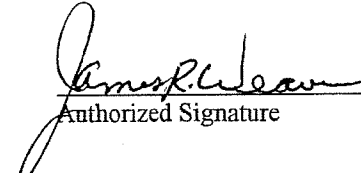
Executed to be effective on the date in the first paragraph hereof.

ACCEPTED AND AGREED:

CLIENT


Authorized Signature

TIER TECHNOLOGIES, INC.


Authorized Signature

RAY TRAIL
Print Name

JAMES R. WEAVER
Print Name

DIRECTOR OF FINANCE
Print Title

PRESIDENT
Print Title

Package Software and Implementation Assistance Contract
KPMG Peat Marwick LLP and City of Wichita, Kansas

Schedule E. KPMG Performance Series Software Maintenance and Support Agreement



Peat Marwick

Management Consultants

Extended Warranty and Support Services Agreement

Licensee: City of Wichita, Kansas

WHEREAS, the parties entered into a license agreement (the "License Agreement") pursuant to which KPMG PEAT MARWICK LLP ("Licensor") granted the Licensee a license to use the software set forth in Schedule I (the System); and

WHEREAS, Licensee is making available an extended warranty of the System;

NOW, THEREFORE, it is hereby agreed as follows:

1. Extended Warranty Services.

Licensor will provide warranty services for the term of this Agreement, as follows:

a. Licensor warrants that the System, when properly installed and operated by qualified professionals, shall perform in accordance with Licensor's specifications. Licensor shall, for the term of this Agreement, provide correction for any error in internal processing logic, or programming defect and/or malfunction (referred to hereafter as "Software Error") in the System so as to make the System operate in accordance with Licensor's specifications. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

b. The Licensee shall be responsible for providing the documentation needed to

define the nature and extent of any potential or actual software problem. Written inquiries must be provided with a completed copy of the Extended Warranty Inquiry Form (Schedule II) accompanying this Agreement. If Licensor's resources are required to determine whether a potential problem is a Software Error, then Licensee shall reimburse Licensor for actual time, materials, and expenses associated with determination of the problem.

c. The Licensee is responsible for making appropriate copies of system data and for reconstructing data that may accidentally be altered or destroyed by a Software Error.

d. Changes required to fix Software Errors will be provided to the Licensee who will apply and test the repair logic. Responsibility for maintaining the system continues to reside with the Licensee during periods in which software repairs are being applied.

Package Software and Implementation Assistance Contract
KPMG Peat Marwick LLP and City of Wichita, Kansas

e. The System may be modified by the Licensee. However, Licensor does not warrant the performance of these user modifications or any portion of the system modified or impacted by the modification. Such modifications may be warranted upon review and approval of the modification by a duly qualified representative of Licensor. Any hardware or system software change that affects the operation of the System is not covered by this warranty.

f. Licensor will periodically announce new system releases that have been made to the System. Upon written request, Licensor will make available to the Licensee a machine-readable copy of these system releases and one complete copy of the supporting documentation. The system releases will be provided to the Licensee as is, for installation and use by the Licensee.

g. Upon the written announcement of a new release of the System, Licensor will provide Extended Warranty Services, Section 1 (a), for the old release for a period of 12 (twelve) months.

h. Duly qualified Licensor staff will respond to any queries or problems concerning the System and its operation communicated by the Licensee by telephone or in writing. All Software Errors must be communicated to Licensor in writing as described in paragraph 1 (b) above. Licensor responses will be communicated to the Licensee by telephone or in writing. Responses to Software Errors will be communicated to the Licensee in writing.

i. The foregoing states the entire warranty obligation of Licensor and the exclusive remedy of the Licensee arising out of the

System, and the licensing by Licensor and use by the Licensee, or arising out of any services rendered by Licensor in connection with the system implementation. In no event shall Licensor be liable for incidental, consequential, indirect or special, or any other damages of any nature whatsoever.

2. Term

This Agreement shall commence on the date hereof and continue in force for one year. This Agreement will remain in force from year to year until termination notice is provided by either party.

Package Software and Implementation Assistance Contract
KPMG Peat Marwick LLP and City of Wichita, Kansas

For the Extended Warranty identified above, the Licensee will pay Licensor an annual fee ("Annual Fee") of \$30,614 (calculated at 12% of the standard license fee for the modules licensed). This fee is waived for the first year of this Agreement. Thereafter, the Annual Fee is due and payable thirty (30) days prior to the expiration of each one year period. Any changes in the Annual Fee will be communicated to the Licensee by written notice three (3) months prior to the expiration of each one year period.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

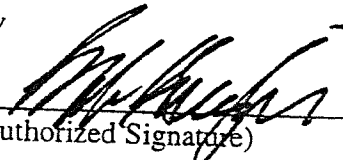
Dated: 7/30/97

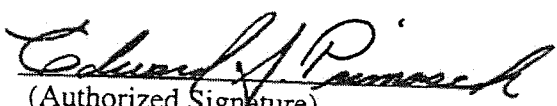
Licensee

KPMG Peat Marwick LLP

By

By


(Authorized Signature)


(Authorized Signature)

Bob Knight, Mayor

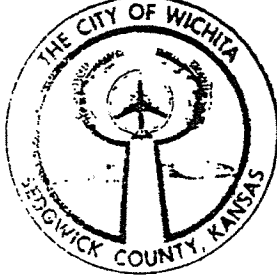
(Print or Type Name and Title)

Edward G. Primosch, Partner

(Print or Type Name and Title)

Attest





Package Software and Implementation Assistance Contract
KPMG Peat Marwick LLP and City of Wichita, Kansas



Management Consultants

Extended Warranty and Support Services Agreement
Schedule I - Warranted Software

<u>Licensed Software</u>	<u>Annual Cost</u>
<i>Performance Accounting</i>	\$10,886
<i>Performance Purchasing</i>	10,368
<i>Performance Budgeting</i>	5,760
<i>Performance Asset Management</i>	3,600

**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council Members

SUBJECT: North Industrial Corridor - Settlement and Release Agreement – United Coverall f/k/a Western Uniform

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Approve the settlement agreement.

Background: The City of Wichita entered into an Agreement with the Kansas Department of Health and Environment on November 14, 1995, under which the City assumed responsibility for the investigation and clean-up of groundwater contamination in the North Industrial Corridor (NIC) Site. The City acquired the right to seek recovery of the costs from the responsible parties and to issue certificates granting contribution protection to property owners and businesses that were not responsible for the contamination or that settled their liability with the City. The City also entered into a Participant Agreement with 28 potentially responsible parties whereby they agreed to help fund the cost of the investigation and to participate in the allocation of costs of the eventual remediation. A settlement agreement has been negotiated by Staff with United Coverall.

Analysis: Western Uniform, now known as United Coverall, was a party to the Participant Agreement and contributed \$50,000 toward the initial investigation of the NIC Site. United Coverall has now proposed to reach an early settlement of its remaining potential liability to the City. Under the agreement, United Coverall will make an addition payment of \$200,000. City staff and the City's engineering consultant believe that this is a fair value for costs attributable to United Coverall and for the assumption of the potential liability for the remediation of the United Coverall site. Upon payment by United Coverall, the City will grant a release giving contribution protection from any further liability for groundwater contamination attributable to it at 1702 -1757 N. Mosley and 808 E. 16th.

Financial Considerations: When received, the settlement sum will be paid into the NIC TIF fund and be used for the expenses of the NIC Project.

Goal Impact: Promote economic vitality and affordable living.

Legal Considerations: The City Attorney recommends the settlement and the Settlement Agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Action: Approve the Settlement Agreement and authorize the appropriate signatures.

Attachment: Settlement and Release Agreement.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into this date _____ ("Effective Date") by and between (a) the **City of Wichita**, a municipal corporation organized and existing pursuant to the Constitution and laws of the State of Kansas, ("WICHITA") and (b) **United Coverall, Inc, f/k/a Western Uniform & Towel Service, Inc., and for the benefit of William James Behring, Pamela Carol Behring, Randall L Whittaker, Regna Lee Whittaker, and Michael McBride** (in their capacities as the last shareholders, officers and/or directors of United Coverall, Inc f/k/a Western Uniform & Towel Service Inc). ("SETTLORS").

RECITALS

A. WHEREAS, on or about November 14, 1995, WICHITA and the Kansas Department of Health and Environment ("KDHE") entered into a Settlement Agreement for Remedial Investigation and Feasibility Study, and for Certain Remedial Actions to be Determined Following Opportunity for Public Involvement, regarding the North Industrial Corridor Site in Wichita, Kansas, which agreement was entered into pursuant to proceedings under the Kansas Environmental Response Act, K.S.A., 65-3452a, et seq., as amended, and K.S.A. 65-161, et seq. (the "Wichita/KDHE Agreement"). Through the Wichita/KDHE Agreement, WICHITA undertook an obligation to perform a Remedial Investigation/Feasibility Study at the Site and to perform such response actions at the Site as may be indicated by the studies.

B. WHEREAS, on or about May 21, 1996, WICHITA also entered into a North Industrial Corridor Participation Agreement ("NIC Participation Agreement") with various

business entities within the Site, including SETTLOR or its predecessors. The signatories or participants to the NIC Participation Agreement have agreed to support WICHITA's environmental efforts within the Site and have contributed financially toward the investigation.

C. WHEREAS, the NIC Participation Agreement establishes a procedure for final allocation of responsibility to each of the participants based solely on costs associated with remediating contamination, if any, caused by that participant, whether on or off its property. The NIC Participation Agreement further provides, among other things, that additional parties identified as potentially responsible parties ("PRPs") shall be given an opportunity to participate in the allocation process and to provide any pertinent information to WICHITA, other private participants, and the neutral allocator.

D. WHEREAS, SETTLORS have been identified as PRPs at the Site by WICHITA.

E. WHEREAS, SETTLORS have owned and operated facilities at 1702, 1704, 1707, 1747, 1753, 1757 all on N. Mosley, and 808 E. 16th Street within the Site as more fully defined in Exhibit "A" hereto (collectively, the "Property") or are otherwise holders of any form of legal or equitable interest in the Property, and are Persons for purposes of Paragraph 135a of the Wichita/KDHE Agreement.

F. WHEREAS, SETTLORS have made an application for a Certificate of Release ("Certificate") under the provisions of the Wichita/KDHE Agreement and seek to have the Property designated as a Certified Property under the Wichita/KDHE Agreement. United Coverall, Inc., has previously sold and conveyed the Property by Deed dated as of June 4, 2008, to Unifirst Corporation and delivered possession of the Property to Unifirst prior to that date. Settlers understand that Unifirst, in its earlier capacity as real estate contract vendee and/or lessee of the Property, has applied and obtained from Wichita certain Certificates of

Release with respect to the Property, and as a result thereof, the Property has been designated as a Certified Property.

G. WHEREAS, Paragraph 135g of the Wichita/KDHE Agreement provides in part that “the City may enter a settlement agreement with any potentially responsible party, without requiring any admission of liability by such party, upon terms satisfactory to the City, and payment of a settlement amount satisfactory to the City.”

H. WHEREAS, Paragraph 135g of the Wichita/KDHE Agreement provides in part that “Upon entry of any such settlement, the settling party also shall be granted a Certificate of Release providing for contribution protection and a covenant not to sue providing that KDHE and the City covenant not to pursue or take further action against the settling party, so long as the settling party remains in compliance with the terms of the settlement agreement applicable to such party, and subject to the provisions of this paragraph.” Wichita has authority to enter into this Settlement Agreement on behalf of the City and KDHE under such provisions of the Wichita/KDHE Agreement.

I. WHEREAS, WICHITA and SETTLORS desire to resolve claims and potential claims among them and, in accordance with the Wichita/KDHE Agreement, relating to response costs incurred or to be incurred in connection with the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants, or contaminants at, within, from, beneath or about the Site, whether known or unknown, occurring prior to the Effective Date, including but not limited to any claims under 42 U.S.C. § § 9606, 9607, and 9613, subject, however, to certain limitations as provided in Paragraph 5 herein and to the reservation of the rights as provided in Paragraph 7 herein. The

compromise and settlement contained in this Agreement was negotiated at arms-length and made in good faith.

J. WHEREAS, by entering into this Agreement, SETTLORS are not admitting that they are liable under CERCLA or under any other federal, state, or local law, are liable for response costs, or are liable for the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants, or contaminants at, within, from, beneath, or about the Site.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WICHITA and SETTLORS agree as follows:

1. **DEFINITION OF RESPONSE COSTS.** When used in this Agreement, "response costs" shall mean those costs, expenses or sums incurred prior to the Effective Date or to be incurred on or after the Effective Date for "response" activities as "response" is defined in CERCLA § 101(25), 42 U.S.C. § 9601 (25), and for costs of investigation and cleanup activities under other applicable federal and state law.

2. **RELEASE AND COVENANT NOT TO SUE.**

a. WICHITA agrees that neither WICHITA nor KDHE shall take any action against, and that both WICHITA and KDHE hereby forever release, SETTLORS, their officers, directors, shareholders, partners, employees, or agents, with respect to any actual or alleged liability of SETTLORS, by way of contribution, subrogation, direct liability, or otherwise, for environmental investigation and remediation described in the Wichita/KDHE Agreement or this Agreement and for payment of

Response Costs related to environmental investigation or remediation of the Site, including the Property ("Released Claims"). Such release from liability shall be final and irrevocable and shall not be affected or terminated by reason of the termination or modification of the Wichita/KDHE Agreement.

- b. Provided, that the Release of subparagraph (a) shall not apply if SETTLORS have provided false or misleading information in connection with obtaining the Certificate.

3. **NON-COVERED CLAIMS.** Notwithstanding anything to the contrary contained herein, the Parties' Released Claims pursuant to Paragraph 2 shall not extend and shall not be construed to extend to the following:

- a. any claims brought by non-parties to this Agreement, other than KDHE, for toxic torts, natural resource damages, personal injury, or property damages in connection with the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances by SETTLORS within the Site;
- b. any claims made by the United States or the State of Kansas relating to SETTLORS' response to requests for information, if any;
- c. any claims relating to or arising out of disposal of hazardous substances by SETTLORS at any location not affecting or related to the Site;
- d. any claims not relating to the Site, including the Property;
- e. any contractual claims against SETTLORS by a third party; or
- f. any criminal claims against SETTLORS.

4. CONSIDERATION.

- a. Within 30 days of the Effective Date, SETTLORS shall pay WICHITA the sum of \$200,000 (the "Settlement Amount"), in such form and manner as reasonably requested by WICHITA, as consideration for the release and mutual promises of this Agreement.
- b. In consideration of the entry into this Agreement, SETTLORS agree not to assert, and hereby assign to WICHITA, any and all claims they may have (except for claims relating to insurance coverage or otherwise arising under contract) for Site response costs against any non-party to this Agreement, except that if any non-party to this Agreement brings a suit against SETTLORS for Site response costs arising from events occurring prior to the Effective Date that is not deemed barred by the contribution protection provided to SETTLORS herein, then SETTLORS retain the right to bring or initiate any claims they may have against any non-party to recover such costs if any such claim has not already been asserted by WICHITA under this assignment. All other claims are specifically reserved and are not assigned. Nothing in this paragraph shall be construed to affect or limit SETTLORS' rights to assert any defenses, claims, or counter-claims in defense of any action.

5. CONTRIBUTION PROTECTION.

- a. The PARTIES agree that by entering into this Agreement that SETTLORS are entitled to and do hereby receive protection from contribution actions

or claims as provided by 42 U.S.C. § 9613 (f)(2) and as set forth in Paragraphs 134, 135, and 136 of the Wichita/KDHE Agreement for a Person to whom a Certificate has been issued ("Matters Addressed").

- b. The consideration paid by SETTLORS pursuant to this Agreement constitutes reimbursement of WICHITA's present and future Response Costs in connection with the Site based on a determination of SETTLORS' proportionate contribution, if any, to the overall Site contamination and legal and equitable claims and defenses that might be raised by the PARTIES, and the PARTIES agree that the consideration paid by SETTLORS is at least sufficient to account for SETTLORS' equitable, several share, if any, of the Response Costs referenced in Paragraph 135 of the Wichita/KDHE Agreement, and hence this Agreement provides SETTLORS contribution protection under 42 U.S.C. § 9613(f)(2) and any applicable state law for Matters Addressed in the Wichita/KDHE Agreement and this Agreement.

6. REPRESENTATIONS AND ACCESS.

This Agreement arises from allegations that SETTLORS, or persons within the control of SETTLORS, have disposed of, transported or otherwise contributed hazardous substances to the Site. In connection therewith, and without admitting the truth of such allegations, SETTLORS represent that, to the best of their knowledge, as of the date of execution of this Agreement, they have not intentionally withheld and are not intentionally withholding material information requested by WICHITA, which is in their

possession, establishing the location and amount or nature of any hazardous substances and releases contributed by SETTLORS to the Site.

7. RESERVATION OF RIGHTS.

- a. Nothing in this Agreement is intended to be nor shall be construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which WICHITA or SETTLORS may have against the other for any claims not identified in Paragraph 2 or for any breach of the Agreement or the exercise of rights to enforce this Agreement.
- b. Except as provided in Paragraph 4, nothing herein is intended to release any of WICHITA's or SETTLORS' claims, causes of action or demands in law or equity against any person, firm, partnership, corporation, organization, governmental entity or any other entity not a signatory hereto for any liability such entity may have arising out of or relating in any way to the generation, transportation, disposal, storage, treatment, spill, release or threatened release of any hazardous substance, pollutant, or contaminant at, to, from, within, or beneath the Site.

8. NO ADMISSION OF LIABILITY. The execution of this Agreement shall not, under any circumstances, be construed as an admission by WICHITA or SETTLORS of any liability with respect to the Site or with respect to hazardous substances, pollutants, or contaminants at, within, from, beneath, or about the Site, including the Property. This Agreement shall not constitute or be used as evidence or an admission of any liability or fact or a concession of any question of law by WICHITA or SETTLORS.

9. **NOTICES.** All notices required or desired to be given under this Agreement shall be in writing and shall be delivered in person or mailed by registered, certified, or overnight mail as follows: With respect to WICHITA to Gary E. Rebenstorf, City Attorney and Director of Law, 455 North Main, Wichita, Kansas 67202. With respect to SETTLORS to Jim Behring, 357 S. Pattie, Wichita, Kansas 67211, and a copy to Steve M. Stark, Fleeson, Gooing, Coulson & Kitch, LLC, 1900 Epic Center, 301 N. Main, Wichita, Kansas 67202.

10. **MISCELLANEOUS PROVISIONS.**

- a. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Kansas, regardless of any conflict of law provisions that may apply. WICHITA and SETTLORS agree that any and all actions at law or in equity, which may be brought by any of the PARTIES to enforce or interpret this Agreement, shall be brought only in the State of Kansas.
- b. **Severability.** In the event that any provision of this Agreement is determined by a court to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in force.
- c. **Modification of the Agreement.** Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
- d. **Rule of Construction.** The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

- e. Entire Agreement. This Agreement, consisting of Paragraphs 1 through 11, inclusive, constitutes the entire understanding of WICHITA and SETTLORS and supersedes all prior or contemporaneous agreements other than those expressly referenced herein, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that it has read each of the provisions of the Agreement and understands the same.

11. CERTIFICATE AND EXECUTION.

This Settlement and Release Agreement shall be considered as and shall operate as a Certificate of Release under the Wichita/KDHE Agreement and the procedures of the City of Wichita. WICHITA represents that the City Manager or Mayor is authorized to execute this Agreement in the same manner as such official has been authorized to execute Certificates for the North Industrial Corridor Site. WICHITA shall also provide SETTLORS with a form Certificate and either this Agreement or the Certificate may be filed of record as to the Property.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first written above.

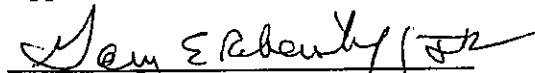
CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:



Gary E. Rebenstorf, Director of Law

**UNITED COVERALL, INC., f/k/a Western
Uniform & Towel Service, Inc.**

By: William J. Behring
Name: William James Behring
Title: President

STATUTORY WARRANTY DEED

[Sedgwick County, Kansas]

United Coverall, Inc., f/k/a Western Uniform & Towel Service, Inc., a Kansas corporation,
hereinafter referred to as

"Grantor"

CONVEYS AND WARRANTS TO

Unifirst Corporation, a Massachusetts corporation, hereinafter referred to as

"Grantee"

for the sum of Ten Dollars (\$10.00) and other good and valuable consideration the
following-described real estate located in the County of Sedgwick, State of Kansas, to-wit:

Parcel 1:

Lots 1,3,5,7,9,11,13,15,17,19,21,23 and 25, on Mosley Avenue, in Glaze and Jocelyn's Addition to Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 8 feet thereof for street, TOGETHER WITH the vacated alley adjoining said Lots on the west.

Parcel 2:

That part of Lot 39, on Mosley Avenue, in Glaze and Jocelyn's Addition to Wichita, Kansas, Sedgwick County, Kansas, described as: Beginning at a point on the North line of said Lot 39, 8 feet west of the Northeast corner thereof; thence south parallel with the East line of said Lot, 0.64 feet; thence west 127 feet to the Northwest of said Lot; thence east 127 feet to the point of beginning.

Parcel 3:

Lots 5, 6, 7 and 8, in Glaze & Jocelyn's 2nd Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

Parcel 4:

Lots 20, 22,24 and 26, on Mosley Avenue, in Glaze and Jocelyn's Addition to Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 8 feet thereof for street.

Parcel 5:

Lots 13,15,17 and 19, on Mosley Avenue, in Glenn's Addition to Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 8 feet thereof for street, TOGETHER WITH the vacated alley adjoining said Lots on the west.

Parcel 6:

Lots 27,29,31,33,35 and 37, on Mosley Avenue, in Glaze and Jocelyn's Addition to Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 8 feet thereof for street, TOGETHER WITH the vacated alley adjoining said Lots on the west.

Parcel 7:

Lots 1,3,5,7,9 and 11, on Mosley Avenue, in Glenn's Addition to Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 8 feet thereof for street, TOGETHER WITH the vacated alley adjoining said Lots on the west.

together with the appurtenances, and all the estate, title and interest of Grantor therein. Grantor hereby covenants and agrees that at the delivery hereof it is the lawful owner of the premises above granted, and seized of good and indefeasible estate of inheritance therein, free and clear of all incumbrances and that it will warrant and forever defend the same in the quiet and peaceable possession of Grantee and its successors and assigns and all and every person or persons whomsoever, lawfully claiming or to claim the same.

Subject to: easements, covenants, and restrictions of record, if any.

DATED this 4th day of June, 2008.

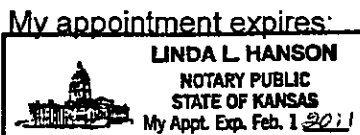
UNITED COVERALL, INC., f/k/a WESTERN UNIFORM
& TOWEL SERVICE, INC.

By William J. Behring
Name: William James Behring
Title: President

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this 4th day of June, 2008, by William James Behring, President of United Coverall, Inc., f/k/a Western Uniform & Towel Service, Inc., on behalf of the corporation.

Linda L. Hanson
Notary Public



**City of Wichita
City Council Meeting
January 27, 2009**

TO: Mayor and City Council

SUBJECT: 2009 Narcotic Seizure Fund Budget

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Adopt the budget for the Narcotic Seizure Fund.

Background: The Wichita Police Department has utilized the Narcotic Seizure Fund for approximately a decade to fund drug-related Police operations. The Narcotic Seizure Fund consists of monies from federal, state, and other agencies obtained as a result of investigations into illegal enterprises such as the possession and sale of narcotics. After the judicial process is completed, the funds are awarded to the Department. The Wichita Police Department adheres to stringent federal and state guidelines in accounting for and using the Narcotic Seizure funds.

Analysis: The budget for the Narcotic Seizure Fund is adopted to permit the expenditure of funds forfeited to the Wichita Police Department. Federal and state regulations require separate accounts for assets forfeited under different forfeiture programs.

Financial Considerations: As of December 31, 2008, the Narcotic Seizure Fund totaled \$297,696.42. The following budget is recommended for 2009:

	<u>Amount</u>
Undercover buy money	30,000
Undercover vehicle maintenance	35,000
Undercover fleet replacement	35,000
Undercover vehicle fuel	50,000
Undercover equipment	20,000
Undercover rent	30,000
Law enforcement training	30,000
Annual audit	3,000
Contingency/fund reserve	<u>64,696.42</u>
TOTAL	297,696.42

Goal Impact: Provide a safe and secure community by placing an emphasis on eliminating illegal enterprises such as the possession and sale of narcotics.

Legal Considerations: Federal and State laws require local units of government to use forfeited assets to supplement the funds dedicated to law enforcement and prohibits supplanting local funds with forfeited assets.

Recommendations/Actions: Adopt the Narcotic Seizure Fund budget.

CITY OF WICHITA
City Council Meeting
January 27, 2009

TO: Mayor and City Council Members

SUBJECT: Payment of Condemnation Award (Case No. 08 CV 3481)—Proposed 21st Street for the Intersection Improvement Project at 21st and Broadway (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Authorize payment of the appraisers' award, together with appraisers' fees and court costs.

Background: The City identified the need to acquire a tract of land located at 223 East 21st Street North for the proposed 21st Street intersection improvement project at 21st Street and North Broadway. This property is owned by Phillip G. Ruffin. The site consists of 24,052 square feet and is improved with a 2,400 square foot masonry building. The property is currently operated as a convenience store with fuel. Last year, the City initiated eminent domain proceedings to acquire this property. On January 16, 2009, the court appointed appraisers filed their award. They determined the compensation to be paid for the acquisition of the property to be \$575,000.00. The court awarded the three appraisers fees in the total amount of \$4,500. 00. Court costs are \$158.00.

Analysis: In order for the City to acquire this property, it must pay the award, together with fees and costs, to the Clerk of the District Court on or before February 16, 2009.

Financial Considerations: The costs of acquiring these properties will be paid from project funds.

Goal Impact: This action addresses both Quality of Life, by providing means to expand recreational opportunities, and Efficient Infrastructure, as the means to do so is by bike paths.

Legal Considerations: If payment is not made to the Clerk by that date, the eminent domain is deemed abandoned. In that event, the City would still be responsible for the fees, costs, and would have additional liability for the attorney fees of the property owners.

Recommendations/Actions: Authorize payment to the Clerk of the District Court in the amount of \$579,658.00 for acquisition of property interests condemned in Case No. 08 CV 3481.

Attachments: Report of the Appraisers

HINKLE ELKOURI LAW FIRM L.L.C.

2000 Epic Center
301 North Main
Wichita, Kansas 67202
(316) 267-2000

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

THE CITY OF WICHITA, KANSAS, a
municipal corporation,

Plaintiff,

vs.

Case No. 08 CV 3481

ANTONIO & MARIA R. RODRIGUEZ, et
al.

Defendants

Pursuant to Chapter 26 of
Kansas Statutes Annotated

REPORT OF APPRAISERS AS TO TRACT 6

We, the undersigned Appraisers, appointed to view and appraise the value of certain land and/or interests and/or rights described in the Plaintiff's Second Amended Petition for Condemnation in the above-captioned matter and to determine the amount of just compensation to be paid to the interested parties resulting from the taking, after being duly sworn and in accordance with the written instructions given by the Court, now report as follows:

On the 6th day of November, 2008, we caused to be published notice of our public hearing to commence on the 9th day of December, 2008, to all interested parties by notice published in *The Derby Reporter*, a newspaper of general circulation in Sedgwick County, Kansas, the proof of which said published notice has been filed in this action. On the 5th day of November, 2008, we caused to be mailed copies of said notice of our public hearing to commence on the 9th day of December, 2008,

to the plaintiff and all defendant parties named in the Second Amended Petition whose addresses were known to us or could with reasonable diligence be ascertained, the proof of which mailing has been filed in this action.

On and after our appointment and qualifying herein, we began our appraisal and assessment of compensation by conducting a public hearing, convened at the 22nd Floor Conference Room in the offices of Hinkle Elkouri Law Firm L.L.C., 301 North Main, Wichita, Sedgwick County, Kansas, on the 9th day of December, 2008, the time and place stated in the published and mailed notices, at which time we received oral and written testimony concerning our appraisal and assessment of compensation from plaintiff and such of the defendants as were present and desired to be heard.

By agreement of the parties, we continued our public hearing as to Tract 6 to the 16th day of January, 2009. On the 12th day of December, 2008, we caused to be mailed copies of a second notice of our public hearing to commence on the 16th day of January, 2009, to the plaintiff and all defendant parties named in the Second Amended Petition whose addresses were known to us or could with reasonable diligence be ascertained, the proof of which mailing has been filed in this action.

On January 16, 2009, at the regularly scheduled public hearing, we were informed that the City of Wichita and the landowner, Phillip G. Ruffin, have agreed and stipulate that the fair market value of the subject property is \$575,000.00.

After consideration of the testimony received at the hearing and by written submissions from the parties; after reviewing and carefully considering the stipulation of fair market value for Tract 6 entered into between the plaintiff and defendant landowner; and following our view of the parcel of land involved, and according to the instructions given us by the Honorable William Woolley, we have appraised the land and/or interests and/or rights therein sought by the plaintiff and described in

the Second Amended Petition for Condemnation, which description is as follows:

Tract 6

The following tract of land is proposed to be taken for the purpose of public right-of-way for the construction and improvement of the planned East 21st Street and North Broadway road improvement project in the City of Wichita, Sedgwick County, Kansas, in accordance with the plans and specifications made therefore. This is a taking of real property interests only. No personal property, including trade fixtures, is being taken. Similarly, no personal property that is subject to removal by a tenant, if any, upon expiration of the tenant's lease is being taken.

Interested Parties: Phillip G. Ruffin (owner); MRP Properties Company, LLC (tenant); Crescent Oil Company (subtenant); Ramdev, Inc. (subtenant); Jaswal, LLC (subtenant); Citicorp USA, Inc. (mortgagee); P.B. Hoidale (secured party)

Clear and complete fee simple title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

All of odd lots 1-13, except the south 6.31 feet (6 feet 3 ¾ inches) of Lot 13, Lawrence Avenue (now Broadway), Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas.

We, the Appraisers, determine the total amount of just compensation to be paid to the landowner and other interested parties, that is the fair market value of the subject property at the time of taking, to be:

\$ 575,000.⁰⁰

The amount set forth above is the total amount of just compensation that should be paid to:

Phillip G. Ruffin (owner); MRP Properties Company, LLC (tenant); Crescent Oil Company (subtenant); Ramdev, Inc. (subtenant); Jaswal, LLC (subtenant); Citicorp USA, Inc. (mortgagee); P.B. Hoidale (secured party)

the owner and other interested parties, for the taking of Tract 6 described above.

We, the undersigned Appraisers, file this Report of Appraisers with the Clerk of the above Court on this 16th day of January, 2009, and hereunto affix our signatures as of that date.

APPRAISERS:



James Gardner II



Steven Barrett



Leo Goseland

Second Reading Ordinances for January 27, 2008 (first read on January 13, 2009)

ZON2008-00066 – Replace multiple Protective Overlays and a Restrictive Covenant to adjust permitted uses and development standards; generally located between Ridge Road and Summitlawn Drive, south of Maple Street. (District V)

ORDINANCE NO. 48-170

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

A09-01-Request by James K. Snook, of James K. Snook Trust Agreement, to annex lands generally located south of MacArthur Road, between Hoover Road and West Street South. (District IV)

ORDINANCE NO. 48-171

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the city of Wichita, Kansas. (A09-01)